

(25,530)

SUPREME COURT OF THE UNITED STATES. ²⁰⁷⁹²

OCTOBER TERM, 1916.

No. 700.

LOTTIE CARNEY, PLAINTIFF IN ERROR,

vs.

J. C. CHAPMAN, DAVID ALBERSON, SINA ALBERSON.
ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

INDEX.

	Original.	Print
Clerk's return to writ of error.....	"	1
Citation and service.....	1	1
Petition for writ of error, assignment of errors, and prayer for reversal	4	2
Order allowing writ of error.....	7	4
Writ of error	9	4
Bond on writ of error.....	11	5
Petition in error.....	12	7
Case-made	15	9
Index	15	9
Petition	22	13
Præcipe for summons.....	27	15
Summons and service.....	29	16
Motion to make petition more definite, &c.....	32	17
Motion to make L. M. Chandler a party defendant.....	35	18
Order on motion to make Chandler a party, &c.....	36	18
Alias summons and service.....	38	19

	Original.	Print
Amended petition.....	41	20
Order as to time to plead.....	45	22
Answer of Pendleton <i>et al.</i>	50	24
Exhibit A—Lease, Alberson to Pendleton, January 18, 1911	54	26
Exhibit B—Lease, Chandler to Pendleton, September 21, 1910	57	28
Lease contract, Alberson and Chandler, July 15, 1910	60	30
Motion for time to plead.....	64	31
Order to amend return and for time to answer.....	65	32
Answer and cross-petition of Alberson heirs.....	67	32
Demurrer to cross-petition.....	72	35
Motion to make answer more definite.....	75	36
General demurrer	77	36
Order to amend return of summons, &c.....	79	37
Order on demurrer, &c.....	80	38
Orders as to time to plead.....	81	38
Special demurrer to amended petition.....	84	39
Answer of Lottie Carney.....	87	40
Order on special demurrer.....	90	41
Memorandum appointing guardian, &c.....	91	42
Order appointing guardian <i>ad litem</i> , &c.....	93	42
Leave to file amended answer.....	94	43
Answer and cross-petition of Alberson.....	96	43
Motion to make cross-petition more definite.....	101	45
Amended answer of Lottie Carney.....	103	46
Deed, Puller to Chapman, January 20, 1912.....	107	48
Journal entries of orders on motion to make more definite, &c.	108	49
Second amended answer and cross-petition of defendants Alberson <i>et al.</i>	110	50
Answer of Lottie Carney to second amended cross-petition	115	52
Answer of Tom Pendleton <i>et al.</i> to second amended cross- petition	120	54
Third amended cross-petition of defendants Alberson <i>et al.</i>	122	55
Reply of Alberson <i>et al.</i>	128	58
Reply of Chapman.....	130	59
Motion for continuance.....	132	59
Journal entries	135	61
Cause continued, &c.....	135	61
Examination of jurors.....	139	63
C. E. Rector	139	63
August Fischback	141	64
Agreement of fact.....	147	67
Plaintiff's Exhibit 1—Warranty deed, Puller to Chapman, January 20, 1912.....	148	67
Plaintiff's Exhibit B—Order of court approving deed, &c., January 20, 1912.....	150	69

Original. Print

Testimony of Susana Conno-ho-tubby.....	153	70
Reno Underwood	165	77
Daniel Harrison	174	82
Manuel Johnson	183	87
Mary Cavatt	190	91
Josiah Walton	193	93
Demurrer to evidence.....	196	95
Testimony of Susana Connoho Tubby (recalled).....	197	95
Daniel Harrison (recalled).....	198	96
Robert Immotochee	199	96
Mrs. Agnes Sampson Fulson.....	202	98
Offers of evidence, &c.....	204	99
Pendleton's Exhibit 1—Lease contract between Alberson and Chandler, July 15, 1910... ..	205	99
2—Lease, Alberson to Pendleton, January 18, 1911.....	208	101
3—Lease, Chandler to Pendleton, Sep- tember 21, 1910.....	211	102
Testimony of Steven Alexander	214	104
Sampson Alexander	231	113
Jilas Hawkins	240	119
Joe Blue	247	123
Peter Blue	250	129
John Foster	260	135
Simon Frazier	272	137
Nancy Underwood	280	142
John Foster (recalled).....	286	145
Amos Hays	287	146
A. D. Tanner	290	147
W. C. Duncan	293	148
Objections to evidence, &c.....	296	150
Notice to take depositions.....	298	151
Deposition of Hogan Keel.....	300	152
Certificate to deposition.....	318	164
Testimony of Wm. L. Byrd.....	319	165
Testimony of Tom Pendleton.....	329	171
Exhibit A—Census card 136, &c.....	331	172
Testimony of Steven Alexander	333	173
Eastman Killcrease	334	174
W. E. Little	336	175
Levi Brown	340	177
Daniel Harrison	345	180
John Foster (recalled).....	347	181
Jilas Hawkins	350	183
Daniel Harrisca (recalled).....	353	184
Exhibit 4—An act to record marriages, &c.....	355	185
Exhibit 5—An act to legalize marriages solemnized by licensed preachers	357	185
Census card No. 136, &c.....	360	187
Stenographer's certificate	362	188

	Original.	Print
Instructions requested by plaintiff.....	364	188
Instructions requested by defendants.....	369	190
Charge of the court.....	375	192
Verdict	386	197
Motion for new trial.....	388	198
Findings of fact.....	392	200
Order overruling motion for new trial, &c.....	393	200
Journal entry of verdict, &c.....	395	201
Journal entry of judgment.....	396	202
Order overruling motion for new trial, &c.....	401	204
Bond on appeal.....	404	205
Service of case-made.....	409	208
Waiver of summons, &c.....	410	209
Agreement as to case-made.....	411	209
Clerk's certificate to case-made.....	412	210
Judge's certificate to case-made.....	413	210
Clerk's certificate to case-made.....	415	211
Stipulation for correction of case-made.....	416	212
Order for correction of case-made.....	417	213
Clerk's certificate to corrected case-made.....	418	213
Order of Supreme Court allowing withdrawal of case-made...	419	214
Order continuing cause	420	214
Order of argument and submission.....	421	214
Judgment	422	215
Opinion, Wilson, C.	423	216
Motion for rehearing.....	429	220
Order overruling motion for hearing on motion for rehearing..	434	223
Motion to strike motion for rehearing &c.....	435	223
Order to file brief on motion.....	437	224
Reply to motion to strike.....	438	224
Order denying motion for rehearing.....	440	225
Orders staying mandate	441	225
Order authorizing service of citation.....	443	226
Clerk's certificate	444	226

a In obedience to the commands of the within Writ of Error I herewith transmit a duly certified transcript of the record and all proceedings in said Supreme Court of the State of Oklahoma to the Supreme Court of the United States, in the within entitled cause.

In witness whereof, I hereto set my hand and affix the seal of said Supreme Court, at Oklahoma City, this 26th day of September, 1916.

[Seal Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk of the Supreme Court of Oklahoma.

1 THE UNITED STATES OF AMERICA, ss:

The President of the United States to J. C. Chapman, David Alber-son, Sina Alberson, Salina Alberson, Tom Pendleton and L. M. Chandler, Greeting:

You are hereby cited and admonishe- to be and appear at and be-fore the Supreme Court of the United States at Washington, D. C. within thirty days from date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Okla-homa, wherein Lottie Carney is plaintiff in error and you are de-fendants in error, to show cause, if any there by, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of the State of Oklahoma, this fifth day of September, in the year of our Lord nine-teen hundred and sixteen.

J. F. SHARP,
Acting Chief Justice Supreme Court of Oklahoma.

Attest:

[Seal Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk of the Supreme Court of Oklahoma.

2 *Return of Service.*

STATE OF OKLAHOMA,
County of Pontotoc, ss:

Personally appeared before me, the undersigned, Notary Public, R. E. Duncan, Sheriff of Pontotoc County, — having been duly sworn states: I am a resident of Pontotoc County and am more than twenty-one years of age; I was duly authorized and deputized by the Honor-able J. F. Sharp, Acting Chief Justice of the Supreme Court of the State of Oklahoma, to serve a citation, hereto attached, on the de-fendants-in-error, and I served the same by delivering a true and

exact copy of said citation personally to each of said defendants-in-error at the following time- and place-:

To J. C. Chapman at Ada, Sept. 13, 1916.

To David Alberson at 4 East Stonewall, Sept. 15, 1916.

To Sina Alberson at Ada, Sept. 12, 1916.

To Salina Alberson at 4 — M. East Stonewall, Sept. 15, 1916.

To Tom Pendleton at 6 — M. East Ada, Sept. 15, 1916.

To L. M. Chandler at Ada, Sept. 12, 1916.

Fees for service \$7.85 paid by Plaintiff-in-Error.

R. E. DUNCAN.

Sworn and subscribed to before me this 16 day of September, 1916.

[A. R. Sugg, Notary Public, Ada, Pontotoc County, Okla.]

A. R. SUGG,
Notary Public.

My commission expires Jan. 8th, 1918.

3 [Endorsed:] 6392. Lottie Carney vs. J. C. Chapman. Citation. Filed in the Supreme Court of Oklahoma, Sep. 18, 1916. William M. Franklin, Clerk.

4 Filed Aug. 12, 1916. William M. Franklin, Clerk.

Supreme Court, State of Oklahoma.

LOTTIE CARNEY, Plaintiff in Error,

vs.

J. C. CHAPMAN et als., Defendants in Error.

Petition for Writ of Error, Assignment of Error, and Prayer for Reversal.

Lottie Carney, Plaintiff-in-Error, considering herself aggrieved by the final decision of the Supreme Court of Oklahoma, in rendering judgment against her in the above entitled cause, hereby prays a writ of error from the said decision and judgment, to the United States Supreme Court, and an order fixing the amount of a supersedeas bond.

And Plaintiff-in-Error assigns the following as errors in the record and proceedings of said case:

The Supreme Court erred in holding that it was "Harmless Error" for the trial court to instruct the jury as to what constituted a common law marriage at a time when, as conceded by the Supreme Court, the common law had not been extended to the Indian Territory; and in refusing to instruct the jury that a marriage not in accordance with custom and laws of the Chickasaw Indians was void; and the Supreme Court further erred in holding that under the Act of Congress of May 2, 1890, the privies

of the defendants-in-error, inherited the land in question to the exclusion of plaintiff-in-error.

The errors aforesaid being more fully set out as follows:

The Supreme Court in the judgment here complained of said:

"Thus it will be seen that the *the* question whether Charles and Louisa had become husband and wife, by common law or tribal custom marriage in 1887 become the pivotal question in the trial court * * * By the act of Congress of May 2, 1890, it was expressly provided: 'That all marriages contracted under the laws of tribal customs of any Indian nation now located in the Indian Territory are hereby declared valid, and the issue of such marriages shall be deemed legitimate and entitled to all inheritances of property or other rights, the same as in the case of the issue of other forms of lawful marriage.' Therefore, if Puller and Louisa were married in 1887 according to their tribal customs, John as the offspring of such marriage was a legitimate child, entitled to inherit and transmit title to land as such."

Since the Act of Congress, *supra*, held that marriage among the Indians in accordance with their laws and custom was valid, the contrary would be true if such marriage was not in accordance with the laws and customs; The rights of Lottie Carney, a full blood Chickasaw Indian, to the property in question, depends upon the legality of the marriage of Louisa James and Charley Puller in 1887, thus presenting a federal question.

Plaintiff-in-error requested the trial court to give the following instruction, which was refused and exceptions duly saved and presented to this court:

"The court instructs the jury that under the laws and customs of the Chickasaw Indians a common law marriage is not recognized and a marriage entered into by and between members of said tribe of Indians without a compliance of their laws is void."

(Case made 352.)

6 The trial court gave the following instructions, Plaintiff in error *accepted* and exception was duly saved and properly presented to this court:

"The court instructs the jury that a common law marriage was valid in the Indian Territory, even though the contracting parties did not follow the provisions of the Indian law, even though said Indian law fixed the punishment for the failure of the parties to follow such Indian statute."

(Case made 360.)

The Supreme Court in its final judgment held that the action of the trial court as to the instruction aforesaid was error, but that the error was harmless; and of this finding of the court plaintiff in error complains and assigns the same as error.

At the time of the alleged marriage in question the Chickasaw Nation had a statute providing:

"All marriages in this Nation shall be solemnized by any Judge or ordained preacher."

(Case made 335.)

The Chickasaws also had a statute reciting that the Indian District Court had held that certain marriages performed by preachers not duly ordained were illegal and void, and enacting curative legislation concerning such marriages.

(Case made 335.)

The testimony on behalf of defendants in error as set forth in their brief Pages 27, 28, 29, 30 and 31 without exception establishes the fact that at the time the marriage in question is alleged to have taken place, the Indians uniformly went before a preacher to be married in accordance with the recently enacted laws.

The defendants in error made no attempt whatever to prove that the parties to this alleged marriage ever went before a preacher and this fact was called to the attention of the Supreme Court in the brief of the plaintiff in error on rehearing.

For the errors aforesaid Lottie Carney prays that the judgment of the Supreme Court of Oklahoma rendered June 16th, 1916, be reversed and a judgment rendered as herein prayed in favor
7 of Plaintiff-in-Error.

KIRBY FITZPATRICK,
Attorney for Lottie Carney.

STATE OF OKLAHOMA,
Supreme Court, ss:

Let the writ of error issue upon the execution of a bond by Lottie Carney to J. C. Chapman, et al., in the sum of Two Thousand Dollars; such bond when approved to act as a supersedeas.

Dated this the 12 day of August, 1916.

MATTHEW J. KANE,
*Chief Justice of Supreme Court,
State of Oklahoma.*

Attest:

[Seal Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk Supreme Court, Okla.

Filed Aug. 12, 1916. William M. Franklin, Clerk.

8 [Endorsed:] #6392. Lottie Carney vs. J. C. Chapman,
et al. Petition for writ of Error, Assignment of Error,
Prayer for Reversal and Allowance of Writ. Kirby Fitzpatrick,
Oklahoma, *Oklahoma*, Attorney for Plaintiff-in-Error, Lottie Carney.

9 Filed Sep. 7, 1916. William M. Franklin, Clerk.

The President of the United States of America to the Honorable Judges of the Supreme Court of the State of Oklahoma, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said court before you,

being the highest court of law or equity of the said State in which a decision could be had in said suit between Lottie Carney, Plaintiff in Error and J. C. Chapman, David Alberson, Sina Alberson, Salina Alberson, Tom Pendleton and L. M. Chandler, Defendants in Error, wherein was drawn into question the rights of plaintiff in error under the interpretation of an act of Congress, and the decision was against the rights of said plaintiff in error claimed under said act of Congress; a manifest error hath happened to the great damage of the said Lottie Carney, plaintiff in error as by her complaint appeared. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, so command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things enocerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, the fifth day of September, in the year of our Lord One Thousand Nine Hundred and Sixteen.

[Seal of the United States District Court, Western District of Oklahoma.]

ARNOLD C. DOLDE,
*Clerk of the United States Court for
the Western District of Oklahoma.*

Allowed:

J. F. SHARP,

*Acting Chief Justice of the Supreme Court
of Oklahoma.*

10 [Endorsed:] Lottie Carney vs. J. C. Chapman. Writ of Error.

11 Filed Sep. 5, 1916. William M. Franklin, Clerk.

Supreme Court of the State of Oklahoma.

LOTTIE CARNEY, Plaintiff in Error,

vs.

J. C. CHAPMAN, DAVID ALBERSON, SINA ALBERSON, SALINA ALBERSON, Tom Pendleton, and L. M. Chandler, Defendants in Error.

Bond.

Know all men by these presents, That we, Lottie Carney as principal and R. P. Ford, Daniel Hays, and Jim Carney, as sureties are

held and firmly bound unto J. C. Chapman, David Alberson, Sina Alberson, Salina Alberson, Tom Pendleton and L. M. Chandler, in the sum of Two Thousand Dollars to be paid to said defendants in error, to which payment, well and truly to be made, we bind ourselves jointly and severally firmly by these presents. Dated this the Fourteenth day of August nineteen — and sixteen.

Whereas, the above plaintiff in error seeks to prosecute her writ of error to the United States Supreme Court to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Oklahoma.

Now therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute *its* said writ of error to effect, and answer all costs and damages that may be adjudged if she fail to make good her plea, then this obligation to be void, otherwise to remain in full force and effect.

her
LOTTIE CARNEY, *Principal.* x
mark.
R. P. FORD, *Surety.*
JIM CARNEY, *Surety.*
DANIEL HAYS, *Surety.*

Witness to signature of Lottie Carney who cannot write her name and who wrote her name for her at her request and in her presence:
A. H. CONSTANT.

Attesting witness:
HOMER PHELPS.

STATE OF OKLAHOMA,
County of Pontotoc, ss:

Personally appeared before me the undersigned Notary Public, R. P. Ford and Jim Carney & Daniel Hays, being each duly sworn, each states on oath: We are each of lawful age and citizens of the State of Oklahoma, and know the contents of the foregoing bond to which we have attached our names. We each for himself say we are worth the sum of Two Thousand Dollars over and above all debts liabilities and exemptions.

R. P. FORD, *Surety.*
JIM CARNEY, *Surety.*
DANIEL HAYS.

Sworn and subscribed to before me this the 15th day of August, 1906.

[SEAL.]

J. C. DEEVER.
Notary Public.

My com. exp. 6/18/1918.

Bond approved, and to operate as a supersedeas.

J. F. SHARP,
Acting Chief Justice Supreme Court Oklahoma.

[Endorsed:] #6392. Carney vs. Chapman. Bond. (Copy.)
Filed Sep. 5, 1916. William M. Franklin, Clerk.

12 In the Supreme Court of the State of Oklahoma.

Number 6392.

LOTTIE CARNEY, Plaintiff in Error,

vs.

J. C. CHAPMAN, DAVID ALBERSON, SINA ALBERSON, SALINA ALBERSON, TOM PENDLETON, and L. M. CHANDLER, Defendants in Error.

Petition in Error.

Filed May 12, 1914. W. H. L. Campbell, Clerk.

Comes now Lottie Carney the above named plaintiff in error and complaining of the said J. C. Chapman, David Alberson, Sina Alberson, Salina Alberson, Tom Pendleton, and L. M. Chandler, defendants in error herein, allege:

I.

That heretofore, to wit: on the 13th day of November, 1913, in the District Court of Pontotoc County, State of Oklahoma, the first named defendant in error obtained judgment against the above named plaintiff in error, and defendants in error David Alberson, Sina Alberson, Salina Alberson, Tom Pendleton and L. M. Chandler, in a certain action then pending in the said District Court of Pontotoc County, as aforesaid, wherein the said J. C. Chapman, was plaintiff and the said David Alberson, Sina Alberson, Salina Alberson, Tom Pendleton and L. M. Chandler were defendants.

II.

13 Plaintiff in error further avers, that said plaintiff in error Lottie Carney being the only defendant in the said lower Court desiring to appeal from said judgment as aforesaid and rendered as aforesaid, has made the other defendants in the lower Court defendants in error along with the said J. C. Chapman, who was plaintiff below, and that the said cause is now styled in this Court as above set forth.

The original Case-Made in said cause, duly certified, attested and filed with the papers in the case in the office of the District Clerk of Pontotoc County, State of Oklahoma, and afterwards withdrawn for this appeal is hereunto attached, marked exhibit "A" and made a part of this petition in error; and that said plaintiff in error avers that there is error in the said record and proceedings, in this, to wit:

I.

Said Court erred in overruling the motion of plaintiff in error for a new trial.

II.

Irregularity in the proceedings of the Court and jury by which the defendants were prevented from having a fair trial.

III.

Accident and surprise, which ordinary prudence could not have guarded against.

IV.

That the verdict is not sustained by sufficient evidence and is contrary to law.

V.

That the said verdict is contrary to both the law and evidence.

VI.

Error of law occurring at the trial and duly excepted to at the time by said defendants and who is now plaintiff in error herein.

VII.

Error of the Court in refusing to give to the jury the pre-emptory instruction requested by plaintiff in error, defendant below.

VIII.

Error of the Court in giving to the jury instructions Nos. two (2) and three (3).

14

IX.

Error of the Court in refusing to give requested instruction Numbers One (1) and two (2) offered by plaintiff in error at the close of said trial.

X.

Error of the Court in admitting incompetent, irrelevant and *incompetent* testimony offered by defendant in error J. C. Chapman, David Alberson, Sina Alberson, Salina Alberson, Tom Pendleton and L. M. Chandler, and excluding competent, relevant and material testimony offered on the part of plaintiff in error on the trial of said cause, all of which was duly excepted to at the time by said plaintiff in error.

XI.

Error of the Court in overruling plaintiff in error's challenge to August Fischbeck, O. E. Rector and A. K. Ellard to act as jurors in said cause upon the grounds of their bias in favor of J. C. Chapman defendant in error herein, and plaintiff in the Court below.

Wherefore, premises considered, plaintiff in error prays that the said judgment may be reversed, set aside and held for naught, and that a judgment may be rendered in favor of the plaintiff in error, and against the defendants in error and that the plaintiff in error may be restored to all rights that she has lost by the rendition of such judgment, and for such other and further relief as to the Court may seem equitable and just.

LOTTIE CARNEY,
Plaintiff in Error,

By C. F. GREEN,

By BOLEN & CRAWFORD,
Her Attorneys.

15

"Ex. A."

Filed in the District Court of Pontotoc County, Oklahoma, this 4th day of May, A. D. 1914.

[SEAL.]

A. D. TANNER,
Dist. Clerk.

Index to Case-made.

Petition	Pages	1 to 6
Præcipe	"	6- 7
Summons	"	8- 9- 10
Motion of defendant Lottie Carney	"	11- 12- 13
Motion of defendant Tom Pendleton	"	14- 15
Minutes of clerk	"	16
Alias summons	"	17- 18- 19
Amended petition	"	20 to 25
Minutes of the clerk	"	25
Motion to Quash	"	26 to 29
Answer of defendants Tom Pendleton and L. M. Chandler	"	29 to 43
Motion for further time	"	43- 44
Minutes of the clerk	"	45
Answer of Alberson heirs	"	46 to 51
General demurrer of Lottie Carney and Tom Pendleton	"	51- 52- 53
Motion of Lottie Carney and Tom Pendleton ..	"	54- 55
General demurrer of Lottie Carney	"	56- 57
Order	"	58- 59
Minutes of the clerk	"	60- 61- 62
Special demurrer of Lottie Carney	"	63- 64- 65

Separate answer of Lottie Carney	Page	66- 67- 68
Order overrul- defendant Lottie Carney's special demurrer	"	69- 70
Minutes of the clerk	"	71
Order appointing C. E. B. Cutler guardian ad litem	"	72- 73
16 Minutes of the clerk	Page	74
Amended answer and cross petition....	"	75 to 80
Motion of Lottie Carney	"	80- 81
Amended answer of Lottie Carney	"	82 to 88
Minutes taken from clerk's journal	"	88
Second amended petition	"	89 to 94
Separate answer of Tom Pendleton and L. M. Chandler	"	94 to 99
Separate answer of Lottie Carney	"	99-100
Third amended answer and cross petition	"	101 to 107
Reply	"	107-108
Reply	"	109-110
Motion for continuance	"	111 to 115
Minutes of the clerk	"	115-116
Style of cause and appearances on day of trial	"	117
Proceedings at the opening of the trial.....	"	118
Exceptions taken to jurors	"	119 to 126
Plaintiff's evidence	"	127
Agreement—Plaintiff's exhibits A and B.....	"	127 to 133
Susana Connohotubby, direct examination....	"	133 to 136
" " cross "	"	136-137
" " " "	"	138 to 144
Reno Underwood, direct "	"	145-146
" " cross "	"	147 to 153
" " redirect "	"	153
17		
Daniel Harrison, direct examination....	Pages	154 to 157
" " cross "	"	157 to 162
Manuel Johnson, direct "	"	163-164
" " cross "	"	164 to 168
" " redirect "	"	168-169
Mary Cavatt, direct "	"	170
" " cross "	"	170-171-172
Josiah Walton, direct "	"	173
" " cross "	"	173-174-175
Plaintiff rests	"	176
Demurrer of defendants Lottie Carney and Tom Pendleton	"	176
Susana Connohotubby, cross examination....	"	177
Daniel Harrison, cross "	"	178
Defendants'—Alberson heirs evidence	"	179
Robert Immotochee, direct examination....	"	179
" " cross "	"	180-181
Mrs. Agnes Sampson		
Fulson direct "	"	182

Mrs. Agnes Sampson

Fulsom	cross examination . . .	Page	182-183
Defendants Alberson heirs rest		"	184
Defendants Lottie Carney and Tom Penton's evidence		"	184
Exhibits 1-2-3		"	184 to 194
Steven Alexander,	direct examination . . .	"	194 to 196
" "	cross " . . .	"	196 to 204
" "	cross " . . .	"	204 to 208
" "	redirect " . . .	"	208 to 211

18

Sampson Alexander,	direct examination . . .	Pages	211-212- 13
" "	cross " . . .	"	213 to 219
" "	redirect " . . .	"	219
Jilas Hawkins,	direct " . . .	"	220 to 223
" "	re " . . .	"	223
" "	recross " . . .	"	223-224
" "	redirect " . . .	"	224
" "	recross " . . .	"	224
" "	redirect " . . .	"	225-226
" "	recross " . . .	"	226
Joe Blue,	direct " . . .	"	227 to 230
" "	cross " . . .	"	230 to 237
" "	redirect " . . .	"	237-238
Peter Blue,	direct " . . .	"	239 to 243
" "	cross " . . .	"	243 to 247
" "	redirect " . . .	"	247-248
" "	recross " . . .	"	248
John Foster,	direct " . . .	"	249 to 251
Simon Frazier,	direct " . . .	"	252 to 255
" "	cross " . . .	"	255 to 259
" "	redirect " . . .	"	259
Nancy Underwood,	direct " . . .	"	260-261
" "	cross " . . .	"	261 to 264
" "	redirect " . . .	"	264
By juror—by court		"	264
By Mr. Wimbish		"	264
Nancy Underwood,	redirect " . . .	"	265

19

John Foster,	direct examination . . .	Page	266
" "	cross " . . .	"	266-267
Amos Hays,	direct " . . .	"	267-268
Proceedings and statements and evidence of A. D. Tanner, clerk and W. C. Duncan, etc. on question concerning depositions—objection made to the use of the depositions		"	268 to 277
Depositions		"	278-279
Hogan Keel		"	280 to 298

Gov. Wm. L. Byrd,	direct examination . . .	Page	299 to 302
" " " "	cross " . . .	"	302 to 308
" " " "	redirect " . . .	"	308
" " " "	recross " . . .	"	308
" " " "	redirect " . . .	"	308
Tom Pendleton,	direct " . . .	"	309
Defendants Carney and Pendleton rest		"	309
Further testimony for Alberson heirs		"	310
Defendants Alberson minors' exhibit A		"	311 312
Defendants Alberson rest		"	313
Steven Alexander,	cross examination . . .	"	313
Rebuttal testimony for the plaintiff		"	314
Eastman Killcrease,	direct examination . . .	"	314
" " "	cross " . . .	"	314-315
W. E. Little,	direct " . . .	"	316-317
" " "	cross " . . .	"	317-318
" " "	redirect " . . .	"	319
Levi Brown,	direct " . . .	"	320-321
" " "	cross " . . .	"	321 to 325
Daniel Harrison,	direct " . . .	"	325-326
" " "	cross " . . .	"	326

20

John Foster,	direct examination . . .	Pages	327-328
" " "	cross " . . .	"	328-329
Jilas Hawkins,	direct " . . .	"	330-331
" " "	cross " . . .	"	331-332
Daniel Harrison,	direct " . . .	"	333
Plaintiff rests		"	334
Sir rebuttal for the defendants Carney and Pendleton		"	334
Exhibit- 4 and 5		"	334 to 339
All parties rest		"	334
Further exhibit for plaintiff		"	339-340-341
Stenographer's certificate		"	342
Requested instructions asked by plaintiff		"	343 to 348
Requested instructions asked by defendants Lottie Carney		"	348 to 353
Minutes of the clerk		"	353
Charge of the court		"	354 to 365
Verdict		"	365-366
Defendants' motion for new trial		"	367 to 371
Findings of fact and conclusions of law reserved to the court		"	371-372
Minutes of the clerk		"	373
Journal entry		"	374 to 380
Order overruling defendants' motion for new trial		"	380 to 383
Supersedeas bond		"	383 to 388
Certificate		"	388
Certificate and service		"	389

Waivers	Page 390-391
Judge's certificates	" 392-393
Clerk's certificates	" 394-395
Stipulations for correction of case-made.....	" 396
Certificate of trial judge for correction.....	" 397
Certificate of clerk as to correction.....	" 398

21 STATE OF OKLAHOMA,
Pontotoc County, ss:

In the District Court.

No. 1015.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

Case-made.

Be it remember-, that in the above entitled and numbered cause there was filed in the District Court within and for Pontotoc County, State of Oklahoma, on the 23rd day of July, 1912, the original petition of the plaintiff, which said petition is in words and figures as follows, to-wit:

Filed May 12, 1914. W. H. L. Campbell, Clerk.

22 STATE OF OKLAHOMA,
Pontotoc County, ss:

In the District Court.

No. —.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON, SINA ALBERSON, and SALINA ALBERSON, Minors,
and Their Guardians, Willie Monroe and Tom Jones, and Tom
Pendleton and Lottie Carney, Defendants.

Petition.

Comes now the plaintiff and states to the Court that David Alber-
son, Sina Alberson and Salina Alberson, are minors, David being
twenty years of age and Sina and Salina each being Seventeen years
of age, and that they reside in Coal County, Oklahoma; that some
time prior to Statehood, Willie Monroe, who resides in Coal County,
Oklahoma, was appointed, and for a time acted as guardian of said

Minors; that afterwards, without any order having been entered discharging said Monroe as such guardian, the County Court of Coal County, Oklahoma, appointed said Tom Jones, Guardian for said minors and that he is now their acting guardian; that by reason thereof, plaintiff is unable to state which, if either of said parties is the present, duly appointed and qualified guardian of said minors; that the defendants, Lottie Carney and Tom Pendleton reside in Pontotoc County, Oklahoma, and for cause of action against, defendants, plaintiff alleges and states:

23 First. That John Alberson, deceased, was a duly enrolled Chickasaw Indian having been enrolled as No. 409, Chickasaw, by blood, and as such duly enrolled Indian, there was allotted and duly patented to him as his part of the lands of the said tribe of Indians, the following described lands and premises, situated in Pontotoc County, Oklahoma, to-wit:

The Northeast quarter and the Northeast quarter of the Northeast quarter of the Southeast quarter of Section Six, and the Southwest quarter of the Southwest quarter of Section Twenty-eight, all in Township Three North, Range Seven East, and being the entire allotment of said John Alberson, deceased; that the said John Alberson, died on or about the — day of —, 1912, leaving surviving him as his sole and only heir at law, his father Charles Puller; that his mother was dead and he left surviving him no children nor issue of any children, nor brothers nor sisters, nor issue of same, and that upon his death, the said Charles Puller was invested with the full and complete title in fee simple to said lands, and became and was the owner of the legal and equitable title thereto and was entitled to the immediate possession of the same.

Second. That on or about the 20th day of June, 1912, the said Charles Puller, by his general warranty deed of said date, conveyed said lands above described, for a good and valid consideration to the plaintiff, whereby he became and is the owner of the legal and equitable title thereto and is entitled to the immediate possession thereof.

Third. The defendant, Tom Pendleton is in possession of said premises, without any right, title or interest in said lands and tenements and has refused to deliver possession of same to plaintiff and is collecting, using and appropriating the rents and revenues therefrom to his own use and benefit and that such rents and revenues are of the reasonable value of Three Hundred Dollars, to pay which — plaintiff, he has failed and refused.

24 Fourth. That the defendants, David Alberson, Sina Alberson and Salina Alberson and their guardian and the defendant Lottie Carney are, each and every one of them claiming to have some right, title or interest in and to said lands, the nature of which is to plaintiff unknown, but that their claims are a cloud upon his title and greatly damages the value of same, and has destroyed its commercial value and that in truth and in fact none of said defendants have any right, title or interest therein, and by reason of their false, untrue and unjust claims, plaintiff is entitled to have his title quieted as against them and each of them.

Wherefore, plaintiff prays that he have judgment for the possession of said premises above described and a decree of this Court determining that none of said defendants have any right, title or interest in and to said land, and quieting his title against their claims and the claims of each of them, and that said defendants and each of them be perpetually and forever barred and enjoined from setting up or asserting any title to or claiming any right or interest in said lands and premises, adverse to or against plaintiff and such other and further relief as may be just and equitable in the premises.

WIMBISH & DUNCAN,

Attorneys for Plaintiff.

25 Endorsement of petition: No. 1015. In the District Court.
J. C. Chapman vs. David Alberson et al. Petition. Filed
Jul- 23, 1912. W. T. Cox, Clerk of District Court, Pontotoc Co.,
Oklahoma.

26 That thereafter and on the 23rd day of July, 1912, there
was filed in said cause a præcipe, which is and was in words
and figures as follows, to-wit:

27 *Præcipe for Summons.*

STATE OF OKLAHOMA,
Pontotoc County, ss:

In District Court.

No. —.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendant.

The Clerk of said Court will issue a summons in the above entitled cause, direct to the Sheriff of Coal County, against the Defendant-, to-wit: David Alberson, Sina Alberson, Salina Alberson, minors and Willie Monroe and Tom Jones their guardian- requiring said defendant- to answer on or before the 25th day of August 1912, and returnable on the 5th day of August, 1912, and you will endorse thereon, suit brought for possession and to quiet title and unless Defendant- answer, judgment will be taken for the sum of \$— with interest at — per cent. per annum from the — day of — 191—.

Dated July 23, 1912.

CURRIE & DUNCAN,

Attorneys for Plaintiff.

Endorsed: No. 1015. Præcipe. In District Court. J. C. Chapman, Plaintiff, vs. David Alberson et al., Defendant-. Præcipe for —. Filed 23rd day of July 1912. W. T. Cox, Clerk District Court.

28 That thereafter and on the 30th day of July, 1912, the was filed in said Cause Summons, which is and was in word and figures as follows, to-wit:

29

Summons.

STATE OF OKLAHOMA,

Pontotoc County, ss:

The State of Oklahoma to the Sheriff of Pontotoc County, Greeting:

You are hereby commanded to notify Tom Pendleton & Lott Carney that they have been sued by J. C. Chapman in the District Court of Pontotoc County, State of Oklahoma, and that they must answer the petition of said J. C. Chapman filed against them in Clerk's office of said Court, on or before the 22nd day of 1912, or said petition will be taken as true and judgment rendered accordingly for quieting title & possession of land.

You will make due return of this Summons on or before the 2nd day of August 1912.

Given under my hand and the seal of said Court this 23rd day of July 1912.

[SEAL.]

W. T. COX, *Clerk,*By ———, *Deputy.*

Suit Brought for —.

If the defendant fail to answer, judgment will be taken for the sum of \$— with interest at the rate of — per cent. per annum from the — day of — 191—, and cost of suit —.

———, *Clerk,*By ———, *Deputy.*

I received this Summons on July 23, 1912, and executed the same in my County by Delivering a true copy of this Summons, with the endorsements thereon, to Tom Pendleton and Lottie Carney, July 30th, 1912.

30

L. E. MITCHELL,

*Sheriff of said County,*By R. E. DUNCAN, *Deputy.*

Endorsed: No. 1015. Summons. J. C. Chapman vs. David Alber-son et al. Issued July 23rd, 1912. Returnable Aug. 2nd, 1912. Answer due Aug. 22nd, 1912. Filed Jul. 30, 1912. W. T. Cox, Clerk of District Court of Pontotoc County, Oklahoma.

Sheriff's Fees.

Serving summons (1st person) \$.50; additional person \$.25; 2 cop. of summons \$.50; Mileage 14, \$1.40; Total \$2.65.

———, *Sheriff.*

(Eagle Print, Roff, Okla.)

³¹Filed July 30th, 1912. W. T. Cox, Clerk of District Court
Pontotoc County, Oklahoma.

³¹ That thereafter and on the 14th day of August 1912, there
was filed in said cause Motion of Defendant Lottie Carney to
require plaintiff to make petition more definite and certain, which is
and was in words and figures as follows, to-wit:

³² STATE OF OKLAHOMA,
County of Pontotoc, ss:

In District Court.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

*Motion to Require Plaintiff to Make Petition More Definite and
Certain.*

Comes now Lottie Carney, one of the above named defendants,
and moves the Court to require plaintiff to make his petition more
definite and certain, in this, to-wit:

1.

To state the quantum of Indian Blood that the said Charles Puller
has.

2.

In the first paragraph of said petition to state whether the said
Charles Puller is the father of the said John Alberson as the result
of lawful wedlock, or whether he claims to be an lawful heir by
reason of having acknowledged or adopted the said John Alberson
as his lawful issue.

3.

That the plaintiff be required to attach to his petition a copy of
the warranty deed referred to in paragraph two of said petition
or give such reference thereto as will enable defendant to examine
same in the office of the Register of Deeds.

Wherefore, the judgment of the Court is prayed sustaining this
motion and that the plaintiff be required to comply therewith.

LOTTIE CARNEY,

By C. F. GREEN,

Her Attorney.

33 Endorsement of Motion: No. 1015. J. C. Chapman, vs. David Alberson et al. Motion of Def. Lottie Carney to require Pl'tf to make petition more definite & certain. Filed Aug. 14, 1912. W. T. Cox, Clerk of Dist. Court, Pontotoc County, Oklahoma.

34 That thereafter and on the 14th day of August, 1912 there was filed in said cause Motion of Defendant Tom Pendleton, which is and was in words and figures as follows, to-wit:

35 STATE OF OKLAHOMA,
 County of Pontotoc, ss:

In District Court.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

Motion.

Comes now Tom Pendleton, one of the defendants in the above entitled action, and respectfully shown to the Court that he is holding possession of a part of said premises, the subject of this action, by virtue of a sub-lease from one L. M. Chandler; that the said L. M. Chandler holds the original lease to a part of said premises from the deceased John Alberson, and the original allottee of said lands.

Wherefore, the defendant Tom Pendleton moves the Court for an order requiring that the said L. M. Chandler be made a party defendant for the purposes of protecting the covenants of the sub-lease.

TOM PENDLETON, *Defendant*,
By C. F. GREEN, *His Attorney*.

Endorsed: No. 1015. J. C. Chapman vs. David Alberson et al. Motion of Defendant Tom Pendleton. Filed Aug. 14, 1912. W. T. Cox, Clerk Dist. Court of Pontotoc Co., Oklahoma.

36 *Minutes Taken from Clerk's Journal.*

No. 1015.

J. C. CHAPMAN

vs.

DAVID ALBERSON et al.

August 26th, 1912.

Ordered that L. M. Chandler be made a party defendant. Motion of defendant sustained as to 2nd and 3rd par. Overruled as

to 1st, to make more definite and certain. 10 days granted plaintiff to amend.

37 That thereafter and on the 30th day of August 1912, there was filed in said cause alias summons, which is and was in words and figures as follows, to-wit:

38 *Summons.*

STATE OF OKLAHOMA,
Pontotoc County, ss:

The State of Oklahoma to the Sheriff of Coal County, Greeting:

You are hereby commanded to notify David Alberson, Sina Alberson, Salina Alberson, Minors, Willie Monroe, & Tom Jones, their Guardian that they have been sued by J. C. Chapman in the District Court of Pontotoc County, State of Oklahoma and that they must answer the petition of said J. C. Chapman filed against them in the Clerk's office of said Court, on or before the 22nd day of Sept. 1912, or said petition will be true and judgment rendered accordingly for possession & quieting title to certain land.

You will make due return of this Summons on or before the 2nd day of Sept. 1912.

Given under my hand and the seal of said Court this 20th day of August, 1912.

[SEAL.]

W. T. COX, *Clerk,*
By ———, *Deputy.*

Amended Return of Sheriff.

I, received this summons on the 21st day of August, 1912, and executed the same in my county, on the 21 day of August, 1912, by delivering a true and perfect copy of the within and attached summons with endorsements thereon to each of the following persons, to-wit:

David Alberson, a minor aged 20 years.

Sina Alberson, a minor aged 17 years.

Salina Alberson, a minor aged 17 years.

39 Willie Monroe and Tom Jones, Guardian of said minors, they being in the care and custody of said Tom Jones and their father and mother being dead.

J. F. MURPHY,
Sheriff of Coal County, Oklahoma,
By R. L. MORGAN, *Deputy.*

I received this Summons on Aug. 21, 1912, and executed the same in my County by delivering a true copy of this Summons with the endorsements thereon, to David Alberson, Sina Alberson, Salina Alberson, Minors, Willie Monroe and Tom Jones their Guardian.

J. F. MURPHY,
Sheriff of said County,
By R. L. MORGAN, *Deputy.*

Endorsement of Summons.

No. 1015. Alias Summons. J. C. Chapman, vs. David Alber-son, et al. Issued Aug. 25, 1912. Returnable Sept. 2nd 1912. Answer due — 22nd 1913.

Sheriff's Fees.

Expense in finding person \$2.00; Servind summons (1st person) \$.50; 4 additional person- \$1.00; 5 copie- of summons \$1.25; Mile- age 50 \$5.00; Total \$9.75.

J. F. MURPHY, *Sheriff*.
R. L. MORGAN, *Deputy*.

Filed Aug. 30, 1912. W. T. Cox, Clerk of District Court of Pon- totoc Co., Oklahoma.

40 Thereafter and on the 16th day of September, 1912, there was filed in said cause plaintiff's amended petition which is and was in words and figures as follows, to-wit:

41 In the District Court in and for the Seventh Judicial Dis- trict, Held in Pontotoc County, State of Oklahoma.

No. 1015.

J. C. CHAPMAN, Plaintiff,

vs.

AVID ALBERSON, NINA ALBERSON, and SALINA ALGERSON, Minors, and Their Guardians, Willie Monroe and Tom Jones, and Tom Pendleton and Lottie Carney, Defendants.

Plaintiff's Amended Petition.

Now comes John C. Chapman, hereinafter called plaintiff, com- plaining of David Alber-son, Sina Alber-son, Salina Alber-son, Willie Monroe, Tom Jones, Tom Pendleton and Lottie Carney, hereinafter called defendants respectively — represents that plaintiff is a resident of Pontotoc County, Oklahoma and that David Alber-son, Sina Alber-son and Salina Alber-son are minors, David being twenty years of age and Sina and Salina are seventeen years of age and that they reside in Coal County, Oklahoma that some time prior to Statehood Willie Monroe, who resides in Coal County, Oklahoma was appointed, and for a time acted as guardian of said minors; that afterwards, without any order having been entered discharging said Monroe as guardian, the County Court of Coal County, Oklahoma, appointed said Tom Jones, guardian for said minors and that he is now their acting guardian; that by reason thereof, plaintiff is unable to stat- which, if either of said parties is the present, duly appointed and qualified

guardian of said minors; that the defendants, Lottie Carney and Tom Pendleton reside in Pontotoc County, Oklahoma, and for
42 cause of action against said defendants plaintiff alleges and states:

First. That John Alberson, deceased, was a duly enrolled Chickasaw Indian having been enrolled as No. 409, being a full blood Chickasaw, and as such was enrolled and there was duly allotted and patented to his part of the lands of the Chickasaw-Choctaw tribes of Indians the following described lands and premises, situated in Pontotoc County, Oklahoma, to wit:

The North East quarter and the North East Quarter of the North East — of the South East quarter of Section Six, and the South West quarter of the South West quarter of Section twenty-eight, all in Township Three North, Range Seven East, and being the entire allotment of said John Alberson, deceased; that the said John Alberson died on or about the — day of June 1911, leaving surviving him as his sole and only heir at law, his father, Charles Puller; that his mother was dead and he left surviving him no children nor issue of any children, nor brothers nor sisters nor issue of the same, and that upon his death, the said Charles Puller was invested with the full and complete title in fee simple in and to said lands, and became and was the owner of the legal and equitable title thereto and was entitled to the immediate possession of the same; That in or about the year 1887 the said Charles Puller and Louisa James, the mother of the said John Alberson entered into a contract of marriage, by the terms of which they mutually agreed to become husband and wife, and that in pursuance of said agreement they did on or about the above named date live and co-habit together as husband and wife and did mutually promise to continue permanently and did continue
43 to maintain such relations for a period of two years; That said marriage contract was according to the custom of the Indian Tribe to which the contracting parties belonged and was a common law marriage contract that during the time that they so lived together as husband and wife there was born to them, as a result of such union the said John Alberson.

Second. That on or about the 20th day of June 1912 the said Charles Puller, by his general warranty deed of said date, conveyed and sold the above described lands for a good, valid and valuable consideration to the plaintiff herein, whereby he became and is the owner of the legal title and equitable title to said lands and is entitled to the immediate possession of the same. That a copy of said deed is hereto attached, marked "Exhibit A" and made a part of this petition.

Third. That the defendant, Tom Pendleton is in possession of said premises, without any right, title or interest in said lands and tenements and has refused to deliver possession of same to this plaintiff and is collecting, using and appropriating the rents and revenues therefrom to his own use and benefit and that such rents and revenues are of the reasonable value of three hundred dollars, which amount he has failed and refused to pay to this plaintiff.

Fourth. That the defendants, David Alberson, Sina Alberson and

Salina Alberson and their guardians and the defendant, Lottie Carney are and each of them — claiming to have some right, title or interest in and to said lands, the nature of which is to this plaintiff unknown, but that their claims are a cloud upon his title and

greatly damages the value of the same, and *has* destroyed its
44 commercial value and that in truth and in fact none of said defendants have any right, title or interest therein, and by reason of their false, untrue and unjust claims this plaintiff is entitled to have his title quieted as against each and all said defendants.

Wherefore premises considered, plaintiff prays that summons issue, and that on final hearing hereof, he have judgment for the possession of said premises above described and *that* a decree of Court determining that none of said defendants have any right, title or interest in and to said lands, and that he have judgment quieting his title against any claims of each and all said defendants, and that said defendants and each of them be forever barred and enjoined from ever setting up or asserting any title to, or claiming any right, title or interest in and to said lands and premises adverse to or against the claim of this plaintiff, for costs of suit and for other and further relief to which he may show himself entitled either in law or equity.

WIMBISH & DUNCAN,

Attorneys for Plaintiff.

Endorsement of Petition.

No. 1015. J. C. Chapman vs. David Alberson et al. Plaintiff's Amended Petition. Filed Sep. 16, 1912. W. T. Cox, Clerk of District Court. Pontotoc Co., Oklahoma. Wimbish and Duncan, Attorneys for Plaintiff.

45 *Minutes Taken from Clerk's Journal.*

No. 1015.

J. C. CHAPMAN

VS.

DAVID ALBERSON et al.

Sept. 17th, 1912.

Defendant- Tom Pendleton and Lottie Carney allowed 10 days to plead to amended petition.

46 That thereafter and on the 20th day of September, 1912, there was filed in said cause a motion to quash summons, which is and was in words and figures as follows, to-wit:

47 STATE OF OKLAHOMA,
Pontotoc County, ss:

In the District Court in and for the County and State Aforesaid.

No. 1015.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

Motion.

Comes now David Alberson, Sina Alberson and Salina Alberson, minors and their guardians, Tom Jones and Willie Monroe, by their attorney C. E. B. Cutler, appearing especially for the purpose of this motion and none other, asks the court to set aside, annual and hold for naught the issuance of the præcipe for summons, and that the summons directed to the above and foregoing parties and the return thereon, be held for naught for the following good and sufficient reasons, to-wit:

First. That the summons directed to David Alberson, Sina Alberson and Salina Alberson minors and their guardians, Tom Jones and Willie Monroe, was not issued, served or returned as the law of the state of Oklahoma provides pertaining to the issuance, service and return of process issued and to be served and returned upon minors.

Second. That the answer day fixed by the summons, and the præcipe filed therein made the answer day fall on Sunday.

Wherefore, the defendants, David Alberson, Sina Alberson and Salina Alberson, minors and their guardians Tom Jones and Willie Monroe, pray that the summons issued and pretended to be returned against them be quashed, set aside and held for naught.

C. E. B. CUTLER,
*Attorney for Defendants David Alberson, Sina
Alberson, and Salina Alberson, Minors, and
Their Guardians, Tom Jones and Willie
Monroe.*

Endorsement of Motion to Quash Summons.

No. 1015. J. C. Chapman vs. David Alberson et al. Motion to Quash Summons. Filed Sep. 20, 1912. W. T. Cox, Clerk of District Court of Pontotoc Co., Oklahoma. C. E. B. Cutler, Attorney.

49 That thereafter and on the 3rd day of October, 1912, there was filed in said cause answer of defendants Tom Pendleton and L. M. Chandler, which is and was in words and figures as follows, to-wit:

50 STATE OF OKLAHOMA,
 County of Pontotoc, ss:

In District Court.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

Answer of Defendants Tom Pendleton and L. M. Chandler to Plaintiff's Amended Petition Filed in Said Cause.

Comes now Tom Pendleton and L. M. Chandler, defendants in the above entitled action, and for answers to plaintiff's amended petition filed herein, *denies* each and all the material allegations therein contained, except those hereinafter specifically admitted:

1.

Defendants, and each of them admit, that at the time plaintiff took the warranty deed as set forth in his petition that defendant Tom Pendleton was in actual possession of said premises, living upon the same with his family and farming said lands.

2.

Defendant Tom Pendleton further answering, says, that he claims right to the possession of the N. E. $\frac{1}{4}$ and The N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Section 6, Township 3 North, Range 7 East, by reason of a certain lease contract, made, executed and delivered said defendant on the 18th, day of January, 1911, by John Alberson, the original allottee of said lands, leasing to the said defendant, Tom Pendleton, the above described lands for a period of one year, from the First day of January, 1912, to Jan. 1st, 1913; that the lands herein described is a part of the Homestead allotment of the
51 said John Alberson and that the said John Alberson, at the time of executing said lease was the owner in fee simple of said lands; that said lease was duly acknowledged and filed for record in the office of the Register of Deeds for Pontotoc County, Okla., on the 18th, day of January, 1911, and Recorded in Micl. Record Vol. 5, at page 675, a copy of said lease being attached hereto marked "Exhibit A," and that the above described real estate is a part of the lands described in plaintiff's petition filed herein.

III.

Defendant Tom Pendleton further answering, says, that he claims the right of possession to Lot 2 and the W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Section 6 Township 3 North, Range 7 East, the same being a part of

the premises described in plaintiff's petition filed herein, by reason of a certain lease contract from L. M. Chandler, dated the 21st day of Sept., 1910, for a period of five years, commencing on the 1st day of January, 1912, and ending on the 31st day of December, 1916; that said lease was properly acknowledged by said L. M. Chandler and filed for record in the office of the Register of Deeds, for Pontotoc County, Oklahoma, on the 21st day of September, 1910, in Vol. 5, Miel. Records at page 392, a copy of said lease being attached hereto marked "Exhibit B" and made a part hereof.

IV.

Defendant Pendleton disclaims any interest in the said premises described herein and plaintiff's petition, except as set forth in this his answer thereto.

V.

Defendant L. M. Chandler, for the purpose of defending the covenants of the lease contract made, executed and delivered Tom
52 Pendleton, a co-defendant herein, on the 21st day of September, 1910, as set forth in paragraph three of this answer and as shown by "Exhibit B" hereto attached, has asked to be made a party defendant in said action, and for said purpose, says that heretofore, to wit, on the 15th day of July, 1910, John Alberson, the original allottee, made, executed and delivered the said L. M. Chandler his certain lease contract, leasing to the said L. M. Chandler for a period from the 1st day of January, 1911, to the 31st day of December, 1915, Lot 2 and the W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Sec. 6, and the S. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of Section 28, Township 3 North, Range 7 East, the same being a part of the Surplus allotment of the said John Alberson, and that the said described lands are a part of the lands sought by plaintiff herein; that at the time of executing said lease by the said John Alberson he was seized in fee simple of the lands so described; that the said lease was properly acknowledged and is of record in the office of the Register of Deeds for Pontotoc County, Oklahoma, on the 23rd day of July, 1910 at 8 o'clock A. M. and placed of record in Miel., Vol. 5, at page 298, a copy of said lease being attached hereto marked "Exhibit C" and made a part hereof; that said lease is a valid one having been given for a valuable consideration, and said defendant Chandler hereby appears to defend the covenants of the sub-lease given to defendant Tom Pendleton, as set forth in his answer as shown by "Exhibit B" paragraph three hereof. That the defendant L. M. Chandler disclaims any interest in the premises herein described, except as set forth in this answer.

53 Wherefore, defendants Tom Pendleton and L. M. Chandler and each of them prays judgment of the Court, decreeing that they and each of them have a valid lease contract upon the premises herein described, and as described in plaintiff's amended petition,

and that they be left in the peaceable possession of said premises and for their cost expended in said action and any other and further relief.

C. F. GREEN,
Attorney for Defendants.

STATE OF OKLAHOMA,
County of Pontotoc, ss:

Tom Pendleton, being duly sworn, on oath, says, that he is one of the defendants above named; that he has read the foregoing answer to the plaintiff's amended petition filed herein and that the statements made therein are true and correct.

TOM PENDLETON.

Subscribed and sworn to before me this 3rd day of Oct. 1912.

W. T. COX,
District Clerk.

STATE OF OKLAHOMA,
County of Pontotoc, ss:

L. M. Chandler, being duly sworn, on oath, says, that he is one of the defendants above named, that he has read the foregoing answer to plaintiff's amended petition filed herein and that the statements made are true and correct.

L. M. CHANDLER.

Subscribed and sworn to before me this 7th day of Oct. 1912.

W. T. COX,
Dist. Clerk.

54

"Ex. A."

Lease.

This indenture, made this 18th, day of January, A. D. 1911, between John Alberson, party of the first part and T. A. Pendleton party of the second part.

Witnesseth, That the party of the first part, in consideration of the covenants of the party of the second part, hereinafter set forth, do by these presents, lease to party of the second part, the following described property, to wit:

The N. E. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Sec. Six (6), Tp. three (3), north, and Range Seven (7) East, containing in all 170 acres more or less as the case may be, according to the Government Plat and survey thereof. This being 60 acre Surplus, and 110 acres Homestead, belonging to the aforesaid John Alberson, in the County of Pontotoc and State of Oklahoma.

To have and to hold the same to the party of the second part, from the First day of January, 1912, to the First day of January 1913,

And the party of the second part, in consideration of the leasing the premises as above set forth, covenants and agrees with the party

of the first part to pay the party of the first part, at Ada as rent for the same the sum of Sixty and No/100 Dollars, payable as follows, to wit:

Thirty and No/100 \$30.00 Dollars in hand Paid, the receipt of which is hereby acknowledged, and Thirty and No/100 Dollars to be paid Jan. the First, 1912.

And the party of the second part, covenants with the party of the first part, that at the expiration of the term of this lease—he will yield up the premises to the party of the first part without further notice, in as good condition as when the same were entered upon by the party of the second part, loss by fire or inevitable and ordinary wear—excepted.

And it is further expressly agreed by the parties hereto, that if default shall be made in the payment of the rent above reserved, or any part thereof, or any of the covenants or agreements herein contained to be kept by the party of the second part, it shall be lawfully for the party of the first part or his legal representatives, to re-enter into and upon said premises or any part thereof, either with or without process of law, and repossess the same at the election of the party of the first part, and to distrain for any rent that may be due thereon upon any property belonging to the party of the second part.

And in order to enforce a forfeiture for non-payment of rent it shall not be necessary to make a demand on the same day the rent shall become due, but a failure to pay the same at the place aforesaid or a demand and a refusal to pay on the same day or at any time on any subsequent day, shall be sufficient; and after such default shall be made, the party of the second part and all persons in possession under him shall be deemed guilty of a forceable detainer of said premises under the statutes.

And it is further agreed by said lessee—that he will not, by or under this lease, or through the possession of said lease ever claim or contest the right of the lessor, John Alberson.

The Covenants herein shall extend to and be binding upon the heirs, executors and administrators of the parties to this lease.

Witness the Hands and Seals of parties aforesaid the day and year first above written.

JOHN ALBERSON. [SEAL.]
T. A. PENDLETON. [SEAL.]

STATE OF OKLAHOMA,
County of Pontotoc, ss:

Before me William H. Nettles, a Notary Public in and for said County and state on this 18th day of January, 1911, personally appeared John Alberson and T. A. Pendleton to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and seal of office this day and year above written.

WILLIAM H. NETTLES,
Notary Public.

My commission Expires the 14th day of September, 1912.

Certificate of Record.

STATE OF OKLAHOMA,
County of Pontotoc:

Filed this 18th day of Jan., 1911, at 3 o'clock P. M., and Registered in No. 5, Misc. Record at page 675.

C. C. HARGIS,
Register of Deeds,
By D. W. SWARRAR, *Deputy.*

57

"Ex. B."

Lease.

This Indenture, made this 21st day of September, 1910, between L. M. Chandler, party of the first part and T. A. Pendleton, party of the second part.

Witnesseth: that the party of the first part, in consideration of the covenants of the party of the second part, hereinafter set forth, does by these presents, lease to the party of the second part, the following described property, to wit:

Lot two (2) and W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Section six (6) Township three (3) North, Range Seven (7) east, I. M., Containing sixty (60) acres more or less—from January 1st, 1912 to December 31st, 1916, in the County of Pontotoc and State of Oklahoma.

To have and to hold the same, to the party of the second part, from the 1st, day of January, 1912 to the 31st day of December, 1916.

And the party of the second part, in consideration, of the leasing the premises as above set forth, covenants and agrees with the party of the first part to pay the party of the first part, at and as rent for the same the sum of \$275.00 (for entire term) *Dollars*, payable as follows, to wit: January 1st, 1912, secured by Chattel Mortgage on the following described property to wit: 1 pony—2 cows—4 yearling heifers; 1 sow—5 shoats; this day executed by said T. A. Pendleton to said L. M. Chandler—and for the further consideration of building one 2 room box house on said premises, 14 x 28 feet.

And the party of second part, covenants with the party of the first part, that — the expiration of the term of this lease—he—will yield up the premises to the party of the first part, without further notice, in as good condition as when the same were entered upon

58 by the party of the second part, loss by fire or inevitable accident and ordinary wear excepted.

And it is further expressly agreed by the parties hereto, that if default shall be made in the payment of the rent above reserved, or any part thereof, or any of the covenants or agreements herein contained to be kept by the party of the second part it will be lawful for the party of the first part or his legal representatives, to re-enter into the said premises, or any part thereof, either with or without process of law and re-possess the same at the election of the party of the first part, and to distrain for any rent that may be due thereon upon any property belonging to the party of the second part. And in order to enforce a forfeiture for non-payment of rent it shall not be necessary to make a demand on the same day and rent shall become due, but a failure to pay the same at the place aforesaid or demand and a refusal to pay on the same day, or at any time on any subsequent day, shall be sufficient; and after such default shall be made, the party of the second part and all persons in possession under them shall be deemed guilty of a forcable detainer of said premises under the Statutes.

And it is further agreed by said lessee—that he will not, by or under this lease, or through the possession of said lands ever claim or contest the rights of the lessor.

The covenants herein shall extend to and be binding upon the heirs, executors and administrators of the parties to this lease.

Witness the hands and seals of parties aforesaid the day and year first above written.

L. M. CHANDLER. [SEAL.]
T. A. PENDLETON. [SEAL.]

59 STATE OF OKLAHOMA,
County of Pontotoc, ss:

Before me A. H. Constant a Notary Public in and for said County and State personally appeared to me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me they executed the same as their free act and deed for the uses, and purposes therein set forth.

In witness whereof, I have hereunto set my hand and notorial seal this the 21st, day of Sept., 1910.

A. H. CONSTANT,
Notary Public.

My commission expires the 28th, day of Feb. 1912.

STATE OF OKLAHOMA,
County of Pontotoc, ss:

Filed this 21st, day of Sept., 1910, at 5 o'clock P. M., and Registered in No. 5 Misc. Record at Page 392.

C. C. HARGIS,
Register of Deeds.

STATE OF OKLAHOMA,

County of Pontotoc, ss:

This lease made and entered into this the 15th, day of July, 1910 by and between John Alberson of Stonewall, Okla., as the first party and L. M. Chandler of the same place Second party.

Witnesseth: that for and in consideration of the covenants and agreements herein and after set forth, said covenants and agreements to be kept by the said — hereto, the party of the First part hereby lets, leases, demises and rents unto the said party of the second part, for the term of five years, beginning the first, day of Jan., 1911 and ending 31st, day of Dec., 1915; the following tract of real estate, to wit:

Lot No. (2) and the W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Section 6, and the S. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of Section 28, Township 3 North, Range 7 East of the Indian base and meridian, containing 99 and 95/100 acres.

To have and to hold, the said premises unto the said Second party, his heirs and assigns for the said term of five years according to the tenor of this contract, and it is further agreed and understood herein, that is that the said second party to pay 1st party the sum of (\$25.00) dollars each year the same being due and payable the 1st. day of Jan. of each year during the life of this contract, also that he the said second party is to build a good and substantial two room house,

the said house to be 14 by 28 ft. that the said improvement is to be placed on the said land before the expiration of this contract and that the said house to be placed on some portion of Lot No. (2) in said Sec. and that the situation to be designed by the said First part. Also that the said second party is to keep all fences and improvements on the said place in good repair during the life of this contract and to turn the same back to the said 1st. party at the expiration of this contract in as good a condition as received the ordinary wear and tear excepted. For the faithful performances we and each of — bind ourselves our heirs, executors and assigns, on this the forementioned date.

JOHN ALBERSON.

L. M. CHANDLER.

STATE OF OKLAHOMA,

County of Pontotoc, ss:

Before me a Notary Public in and for the above named State and County personally appeared the above named parties and acknowledged the same for the uses, purposes and considerations mentioned therein and signed their names in my presence.

J. D. CRAWFORD,

Notary Public.

My commission expires the 5th, day of July, 1911.

Certificate of Record.

STATE OF OKLAHOMA,
Pontotoc County, ss:

I, C. C. Hargis, Register of Deeds of Pontotoc County, Oklahoma, do hereby certify that the instrument hereto attached was filed for record in my office at Ada, in the County and State aforesaid, on the 23rd, day of July, 1910, at 8 o'clock A. M., and duly recorded in Misc. record, Vol. 5 at page 298.

Witness my hand and seal of office at Ada, Pontotoc County, Oklahoma, this the 25th day of July, A. D. 1910.

C. C. HARGIS,

Register of Deeds,

By D. W. SWAFFAR.

Endorsement of Amended Petition: No. 1015. J. C. Chapman vs. David Alberson et al. Answer of defendants Tom Pendleton & L. M. Chandler to Plaintiff's Amended Petition. Filed Oct. 3, 1912. W. T. Cox, Clerk of District Court of Pontotoc County Oklahoma.

That thereafter and on the 11th day of October 1912, there was filed in said cause motion for further time to plead which is and was in words and figures as follows, to-wit:

STATE OF OKLAHOMA,
County of Pontotoc, ss:

In District Court.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

Motion.

Comes now Lottie Carney, one of the above named defendants, and by her Attorney, C. F. Green, shows to the Court that on the — day of —, 1912, she was given ten days to plead to the petition of plaintiff filed herein. That there are other defendants in said cause who have filed a motion in this Court to quash service upon them; that said defendant Lottie Carney cannot intel-igently plead to the petition of plaintiff until the other defendants have also plead thereto.

Wherefore, defendant moves the Court for further time to plead, or at least until the motion of the other defendants to quash service has been passed upon.

LOTTIE CARNEY, *Defendant,*

By C. F. GREEN, *Her Attorney.*

Endorsement of Motion for Further Time to Plead: No. 1015. J. C. Chapman vs. David Alberson et al. Motion for further time to

plead. Filed Oct. 11, 1912. W. T. Cox, Clerk of District Court Pontotoc Co., Oklahoma.

65 *Minutes Taken from Clerk's Journal 4, Page 152.*

No. 1015.

J. C. CHAPMAN

vs.

ALBERSON, DAVID.

Nov. 6th, 1912.

On this day this cause came on to be heard. Leave granted for Sheriff to amend returns on citation. Defendant given until 16th Nov. to Answer.

66 That thereafter and on the 14th day of November, 1912, there was filed in said cause answer of Alberson heirs, which is and was in words and figures as follows, to-wit:

67 STATE OF OKLAHOMA,
Pontotoc County, ss:

In the District Court in and for Said County and State.

No. 1015.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON, SINA ALBERSON, SALINA ALBERSON, Minors, and Their Guardians, Tom Jones and Willie Monroe and Tom Pendleton and Lottie Carney, Defendants.

Separate Answer and Cross-petition of Alberson Heirs and Guardians.

Comes now David Alberson, Sina Alberson and Salina Alberson minors and their guardians Willie Monroe and Tom Jones, by C. E. B. Cutler their attorney, and for answer to the amended petition of the plaintiff herein deny generally and specifically each and every and all the allegations in said amended petition contained, except such as are hereinafter specifically admitted, and for further answer say:

1.

That David Alberson, is — years of age, Sina Alberson is — years of age, and Salina Alberson is — years of age; that they and each of them are minors and reside in Coal County, Oklahoma; that Willie Monroe was heretofore appointed guardian of the foregoing

68 minors by a court presiding in what is now Pontotoc County, Oklahoma; that the said Willie Monroe has failed, neglected and refused to perform the lawful duties encumbent upon her, and that on the — day of October, 1912, he tendered his resignation to the county court of Pontotoc County, Oklahoma and accompanied the same with his final report which had been filed in the county court of Pontotoc County, Oklahoma, and said final report subject to approval, and said resignation is now in the possession of the County Court of Pontotoc County, Oklahoma, for action; that after the appointment of Willie Monroe Tom Jones was legally appointed and qualified as guardian for the above named minors in the county court of Coal County, Oklahoma, that he since that time has had the active charge of minors' estate in question, and he is now by virtue of said appointment and qualification the legal guardian of the defendant minors.

2.

That the father of the defendants minors was Robert Alberson, a member of the Chickasaw Tribe or Nation of Indians, roll number 407; that he was the father of John Alberson deceased; that his lawful wife was the mother of John Alberson deceased; that the defendant minors are the sole heirs at law of the estate of John Alberson deceased because neither the father or mother of John Alberson deceased was living at the time of his death; that there being no other direct heirs at law living at the time of the death of said John Alberson the defendants being of blood relationship were entitled to the real property of John Alberson deceased.

69

3.

That at the time of enrollment of John Alberson deceased, he was enrolled as a son of Robert Alberson and that the roll numbers of David, Sina and Salina Alberson are respectively 410, 411 and 412, and as brothers and sister of John Alberson deceased.

4.

That the claim of Lottie Carney to the real property of John Alberson deceased is not founded on heirship or blood relationship; that the said Lottie Carney is neither a direct or indirect heir to the estate of John Alberson deceased.

5.

That the lease hold interest of Tom Pendleton is without warrant of law or consideration, void of no effect and not a substantial legal obligation against the real property of John Alberson deceased.

6.

That the claim of heirship by Lottie Carney to the estate of John Alberson deceased and the ownership by purchase claimed by plaintiff

iff are a cloud and slander upon the title of the defendant minors; that the plaintiff is wrongfully and illegally in possession of the following described real property to-wit: The N. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Section 6 and the S. W. $\frac{1}{4}$ of Section 28 all in Township 3 North, Range 7 East; that the defendant minors are entitled to the possession of the foregoing premises by reason of the heirship to John Alberson deceased; that the conveyance by purchase of plaintiff from Charles Puller should be cancelled set aside and held for naught and the defendant minors herein fully restored to the title and possession of the foregoing premises.

Wherefore premises considered, David Alberson, Sina Alberson and Salina Alberson by their guardians Willie Monroe and Tom Jones defendants in the above styled and numbered action pray that they have judgment for possession of the above described premises, now adversely held by J. C. Chapman; that a decree of court fixing all right, title or interest in and to said land be awarded them against the claims of heirship of Lottie Carney and the purchase by sale of J. C. Chapman; that they have a further judgment quieting title against any and all claims whatsoever of each and all the parties plaintiff and defendant claiming adverse title to them; that each of all the parties plaintiff and defendant so claiming adverse title to them be forever barred and enjoined from setting up or asserting any title to or claiming any title, right or interest in and to said lands and premises adverse to and against the claim of David Alberson, Sina Alberson and Salina Alberson defendants aforesaid, by either parties plaintiff or defendant; for all costs of this suit and for such other and further relief as to the court may seem proper and right.

C. E. B. CUTLER,

*Attorney for David Alberson, Sina Alberson,
and Salina Alberson, Minors.*

Endorsement of Answer of Alberson Heirs: No. 1015. John C. Chapman, Plaintiff, vs. David Alberson et al., Defendants. Answer of Alberson heirs. Filed Nov. 14, 1912. W. T. Cox, Clerk of District Court of Pontotoc County, Oklahoma.

71 That thereafter and on the 15th day of November, 1912, there was filed in said cause defendant-Lottie Carney and Tom Pendleton's general demurrer to cross petition of David Alberson et al., which is and was in words and figures as follows to-wit:

72 STATE OF OKLAHOMA,
 County of Pontotoc, ss:

In District Court.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

General Demurrer to Cross-petition of Defendants, David Alberson et al.

Comes now defendants Lottie Carney and Tom Pendleton in the above entitled action and offers this as their general demurrer to the "Cross Petition" filed in said cause by defendants, David Alberson, et al., and for grounds thereof, alleges:

1.

That the said "Cross Petition" does not state facts sufficient to constitute a cause of action against the said defendants.

Wherefore, the judgment of the Court is prayed sustaining this demurrer and that said defendants be relieved from answering further in said matter.

C. F. GREEN,
Attorney for Defendants
Lottie Carney and Tom Pendleton.

73 Endorsement of General Demurrer to Cross-petition: No. 1015. J. C. Chapman vs. David Alberson et al. Defendants Lottie Carney & Tom Pendleton. General Demurrer to Cross-Petition of David Alberson et al. Filed Nov. 15, 1912. W. T. Cox, Clerk of District Court of Pontotoc County, Okla., by W. E. McKelvy, Deputy.

74 That thereafter and on the 15th day of November, 1912, there was filed in said cause defendant- Lottie Carney's and Tom Pendleton's motion to require defendant- David Alberson — to make their answer more definite and certain, which is and was in words and figures as follows to-wit:

75 STATE OF OKLAHOMA,
 County of Pontotoc, ss:

In District Court.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

Defendant- Lottie Carney and Tom Pendleton's Motion to Require Defendants David Alberson et al., to Make Their Answer More Definite and Certain.

Comes now Lottie Carney and Tom Pendleton, two of the defendants in the above entitled action and by their Attorney, moves the Court to require the defendants David Alberson, et al., to make their answer filed in said cause more definite and certain, in this to wit:

That they state whether the said answer is intended for both an answer and cross petition or an answer alone.

Wherefore, the judgment of the Court is prayed sustaining this motion, and the said defendants be required to comply with the said request in order that the other defendants named herein may plead intelligently in said action.

C. F. GREEN,

Attorney for Defendants

Lottie Carney and Tom Pendleton.

Endorsed: 1015. J. C. Chapman vs. David Alberson et al. Def- Lottie Carney & Tom Pendleton. Motion to require def- David Alberson — to make their ans. more D—. Filed Nov. 15, 1912. W. T. Cox, Clerk of District Court of Pontotoc County, Oklahoma, by W. E. McKelvy, Deputy.

76 That thereafter and on the 15th day of November, 1912, there was filed in said cause defendant Lottie Carney's general demurrer to plaintiff's petition, which is and was in words and figures as follows, to-wit:

77 STATE OF OKLAHOMA,
 County of Pontotoc, ss:

In District Court.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

General Demurrer.

Comes now Lottie Carney, one of the defendants in said action and files this as her general demurrer to the amended petition of

plaintiff filed herein, and for grounds of said general demurrer alleges and states:

I.

That the petition filed as aforesaid fails to state facts sufficient to constitute a cause of action against the defendant Lottie Carney.

Wherefore, the judgment of the Court is prayed sustaining this general demurrer and that the said defendant be relieved from answering in said matter.

LOTTIE CARNEY, *Defendant*,
By C. F. GREEN,
Attorney for Defendant Lottie Carney.

Endorsed: #1015. J. C. Chapman vs. David Alberson et al. Def- Lottie Carney Gen'l Demurrer to Pl'ff's Petition. Filed Nov. 15, 1912. W. T. Cox, Dist. Clerk, by W. E. McKelvy, Deputy.

78 That thereafter and on the 15th day of November 1912, there was filed in said cause an order, which is and was in words and figures as follows, to-wit:

79 In the District Court of Pontotoc County, State of Oklahoma.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

On this the 6th day of November, 1912, came on to be heard the motion of the plaintiff for the Sheriff of Coal County to amend his return of the summons heretofore issued and served in this cause. The court being sufficiently advised doth find that said motion should be granted.

It is therefore ordered and adjudged by the Court that the Sheriff of Coal County be permitted to amend his return in order that it might speak the truth as to his acts in the service of said summons.

Dated this 6th day of November, A. D. 1912.

TOM D. McKEOWN, *Judge.*

Endorsed: #1015. In the District Court of Pontotoc County, Okla. J. C. Chapman, Plaintiff, vs. David Alberson, et al., Defendants. Order. Wimbish & Duncan, Attorneys for Plaintiff. Filed Nov. 15, 1912. W. T. Cox, District Clerk, by W. E. McKelvy. J/4/189-.

Minutes Taken from Clerk's Journal.

No. 1015.

J. C. CHAPMAN

VS.

DAVID ALBERSON et al.

Feb. 1st, 1913.

Demurrer sustained to plaintiff's petition with leave to amend by interlineation. Defendants Tom Pendleton and Lottie Carney allowed 10 days to answer after amendment.

Minutes Taken from Clerk's Journal 4, Page 462.

No. 1015.

J. C. CHAPMAN

VS.

DAVID ALBERSON.

February 15th, 1913.

Defendants Tom Pendleton and Carney granted ten days to plead.

Minutes Taken from Clerk's Journal.

No. 1015.

J. C. CHAPMAN

VS.

DAVID ALBERSON et al.

March 29th, 1913.

Amendment made. Def'ts Tom Pendleton and Lottie Carney 10 days to plead.

That thereafter and on the 4th day of April, 1913, there was filed in said cause defendant, Lottie Carney's special demurrer to plaintiff's amended petition, which is and was in words and figures as follows, to-wit:

84 STATE OF OKLAHOMA,
 County of Pontotoc, ss:

· In District Court.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

Special Demurrer to Amended Petition of Plaintiff.

Comes now, Lottie Carney, one of the defendants above named, and demurring specially to that part of the second amended petition of plaintiff, which after amendment by interlineation, reads as follows, to wit:

That in or about the year 1887 the said Charles Puller and Louisa James, the mother of the said John Alberson, entered into a contract of marriage, by the terms of which they mutually agreed to become husband and wife, and that in pursuance of said agreement they did on or about the above date live and cohabit together as husband and wife and did mutually promise to continue permanently and did continue to maintain such relations for a period of two years; that said marriage contract was according to the customs of the Indian tribe to which the contracting parties belonged, and was a common law marriage contract,"

and for grounds for said special demurrer says that the said allegations *does* not under the law, constitute a valid marriage, whereby the said Charles Puller could inherit from the said John Alberson, deceased.

II.

85 The said defendant further demurring specially to the said amended petition, by interlineation, states that the following in said petition alleges two cause- of actions in one, to wit:

"That said marriage contract was according to the customs of the Indian tribe to which the contracting parties belonged, and was a common law marriage contract."

That said allegation does not constitute a cause of action against this defendant, for the reason that it is duplicitious and does not sufficiently inform defendant of the grounds the plaintiff will proceed under.

Wherefore, defendant prays the judgment of the Court sustaining this special demurrer.

LOTTIE CARNEY,
By C. F. GREEN,
Her Attorney.

Endorsed: No. 1015. J. C. Chapman, Plaintiff, vs. David Alber-son, et al., Defendants. Defendant, Lottie Carney's special demurrer to plaintiff's amended petition. Filed Apr. 4, 1913. A. D. Tanner, Clerk of the District Court of Pontotoc County, Oklahoma. C. F. Green, Attorney for defendant, Lottie Carney.

86 That thereafter and on the 6th day of May, 1913, there was filed in said cause separate answer of defendant Lottie Carney to amended petition of plaintiff filed Sept. 16th, 1912, which is and was in words and figures as follows, to-wit:

87 STATE OF OKLAHOMA,
County of Pontotoc, ss:

In District Court.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

Separate Answer of Defendant Lottie Carney.

Comes now defendant Lottie Carney in the above entitled action and for separate answer to the amended petition of plaintiff filed in said cause on the 16th day of September, 1912, denies each and every material allegation therein contained, except those hereinafter admitted.

II.

Said defendant further answering said plaintiff denies that said John Alberson was a legitimate Son of Chas. Puller and further denies that said Chas. Puller and Louisa James were ever married under any form of law or custom or were ever married at all.

her
LOTTIE x CARNEY,
mark

Defendant.

I sign her name at her request.

Witness,

JIM CARNEY.

STATE OF OKLAHOMA,
County of Pontotoc, ss:

Lottie Carney, of lawful age being duly sworn, on oath states that she is the defendant above named; that she has read the foregoing answer and that the statements made therein are true and correct.

x LOTTIE CARNEY.

Subscribed and sworn to before me this 26th day of April, 1913.

88 [SEAL.]

R. P. FORD,
Notary Public.

My commission expires the 21 day of Nov. 1915.

Endorsed: Number 1015. J. C. Chapman, Plaintiff vs. David Alberson et al. Defendants. Separate answer of defendant Lottie Carney, to Amended petition of plaintiff filed Sept. 16th, 1912. Filed May 6th, 1913. A. D. Tanner, Dist. Clerk.

89 That thereafter and on the 6th day of May, 1913, there was filed in said cause order overruling defendant Lottie Carney's special demurrer to second amended petition of plaintiff, which is and was in words and figures as follows, to-wit:

90 STATE OF OKLAHOMA,
County of Pontotoc, ss:

In District Court.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

Order Overruling Defendant Lottie Carney's Special Demurrer to Second Amended Petition of Plaintiff.

Now on this 6 day of May, 1913, comes on for hearing a special demurrer filed in said cause by defendant Lottie Carney, challenging the second amended petition of plaintiff filed in said cause, and the Court being fully advised in the premises and after due consideration thereof, is of opinion that said special demurrer should be overruled.

It is, therefore, ordered, adjudged and decreed by the Court, that the special demurrer of defendant Lottie Carney challenging the second amended petition of plaintiff, be and the same is hereby, be the Court overruled, to which the defendant excepts.

TOM D. McKEOWN,
District Judge.

Endorsed: No. 1015. J. C. Chapman, Plaintiff, vs. David Alberson, et al., Defendant. Order. Overruling defendant, Lottie Carney's special demurrer to plaintiff's second amended petition. Filed May 6th, 1913. A. D. Tanner, Dist. Clerk.

91 *Minutes Taken from Clerk's Journal 4, Page 568.*

No. 1015.

J. C. CHAPMAN

vs.

DAVID ALBERSON et al.

May 6th, 1913.

C. E. B. Cutler appointed Guardian ad litem for David Alberson, Salina and Sina Alberson, minors, as per Journal entry. Demurrer of Lottie Carney's second amended petition overruled. Defendant excepts. Answer and cross petition filed.

92 That thereafter and on the 20th day of May, 1913, there was filed in said cause order appointing C. E. B. Cutler, guardian ad litem, which is and was in words and figures as follows, to-wit:

93 STATE OF OKLAHOMA,
County of Pontotoc, ss:

In District Court.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

Order Appointing Guardian ad Litem.

Now on this 6th day of May 1913, comes on for hearing a motion filed in said cause by plaintiff herein asking the Court to appoint a guardian ad litem for the minor defendants David Alberson, Sina Alberson and Salina Alberson, and the Court being fully advised in the premises and it further appearing to the Court that Summons had been issued and served upon said minors on the 21st day of Aug. 1912, and the Court finds that a guardian ad litem should be appointed to defend and look after the interest of the said minors.

It is, therefore, ordered, adjudged and decreed by the court, that C. E. B. Cutler, a regular *practice* attorney at law, be, and he is hereby appointed guardian ad litem for the minor defendants, David Alberson, Sina Alberson and Salina Alberson.

TOM D. McKEOWN,
District Judge.

No. 1015. J. C. Chapman vs. David Alberson et al. Order. Appointing C. E. B. Cutler Guardian ad Litem. Taxed. Filed May 20, 1913. A. D. Tanner, Dist. Clerk. J. 4/532.

94

Minutes Taken from Clerk's Journal.

No. 1015.

J. C. CHAPMAN

vs.

DAVID ALBERSON et al.

May 30th, 1913.

Lottie Carney granted permission to file amended answer.

95 That thereafter and on the 13th day of June, 1913, there was filed in said cause amended answer and cross-petition, which is and was in words and figures as follows to-wit:

96 STATE OF OKLAHOMA,
County of Pontotoc, ss:

In the District Court in the County and State Aforesaid.

No. 1015.

JOHN C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON, SINA ALBERSON, and SALINA ALBERSON, Minors, by C. E. B. Cutler, Their Guardian ad Litem; Lottie Carney and Tom Pendleton, Defendants.

Answer and Cross-petition of Defendants David Alberson, Sina Alberson, and Salina Alberson, Minors, by C. E. B. Cutler, Guardian ad Litem.

Now comes David Alberson, Sina Alberson and Salina Alberson, three of the defendants, Minors by C. E. B. Cutler their Attorney, and for answer to the Amended Petition of plaintiff, and after having obtained leave of Court, file this their first Amended answer and Cross Petition, allege and show:

First. These defendants do deny each and every material allegation in the said plaintiff's petition (amended) made and contained except such of said allegations as shall be hereinafter specially admitted.

Second. These Defendants specially admit that the lands described in said amended petition of the plaintiff, were allotted
97 to John Alberson, who is now deceased, but they do deny specially that the said lands or any portion thereof were inherited by Charles Puller, who is now deceased, from whom plaintiff acquired by warranty deed his claim of title and right of ownership and who claimed to have inherited said lands from John Alber-

son, and do specially deny that the said Charles Puller is the father of John Alberson, deceased, and do *do* specially deny that the plaintiff is entitled to the immediate possession of said lands or any portion thereof.

Wherefore, these defendants pray that the plaintiff herein take nothing by this action, and that these defendants here answering do have the appropriate judgment, order and decree of this Honorable Court as hereinafter in their cross petition prayed for.

Cross-petition.

And these defendants for their cross petition and in this their cross action against the plaintiff herein and against all the defendants other than those here answering, for their cause of action do allege and show:

First. That these defendants, David Alberson, Sina Alberson and Salina Alberson are the sole owners in law and equity of the fee simple estate in and to the following described real estate, the same being mentioned and described in the plaintiff's amended petition, namely:

North East Quarter of the North East Quarter of the South East Quarter of Section Six and the South West Quarter of the South West Quarter of Section Twenty Eight, all in Township three North, Range seven East.

That the said lands were allotted to one John Alberson, who was a member of the Chickasaw Nation or Tribe of Indians as his homestead and surplus allotment, and that these defendants were the sole heirs and next of kin of the said John Alberson at the time of his death, and that by virtue of such inheritance and relationship these defendants, and they alone, are the owners of the real estate hereinabove particularly described.

Second. That the defendants Lottie Carney and Tom Pendleton, and each of them are making some claim of right, title or interest in and to the said premises and every portion thereof, and that the exact nature of such claim is to these defendants unknown but that the said claim- so made by the said co-defendants are in derogation, of, adverse to and a cloud upon the title of these defendants, and that these defendants are entitled to the appropriate order of this Court requiring each of the said co-defendants to appear herein and to set up and disclose their claims of right, title or interest in and to the said real estate so that same may be here adjusted, and furthermore, that upon final determination of this cause, these defendants are entitled to the appropriate judgment and decree of this Court, removing, setting aside and holding for naught the cloud of every such claim upon the title of these defendants, cancelling and holding void any conveyance or other evidence of title relied upon by the said plaintiff and co-defendants.

Wherefore, the premises considered these defendants pray that upon the final determination of this cause, they do have the appropriate judgment, order and decree of this Court, decreeing in them the sole ownership and title, legal and equitable, in and to the

said real estate above described, forever barring and estopping the plaintiff herein and the co-defendants of these defendants from claiming, asserting, making or declaring any right, title or interest in or to the said lands or any part thereof, of any participation in the use, occupancy or enjoyment of the said lands or any portion thereof, and that these defendants do have judgment against the said plaintiff and the said co-defendants for all the costs of this action, in such amounts and proportions as to this Honorable Court shall seem fit, and that these defendants do have such other and further relief of this honorable Court as shall be equitable in the premises.

For all of which in duty bound these defendants do ever pray.

C. E. B. CUTLER,

Attorney for said Defendants.

Endorsed: No. 1015. John C. Chapman, Plaintiff vs. David Alberson, et al., Defendant-. Amended Answer and Cross-petition. Filed Jun- 13, 1913. A. D. Tanner, Dist. Clerk.

100 That thereafter and on the 18th day of June, 1913, there was filed in said cause motion of Lottie Carney for defendant Albersons to make cross petition more definite and certain, which is and was in words and figures as follows, to-wit:

101 STATE OF OKLAHOMA,
County of Pontotoc, ss:

In District Court.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

Motion of Lottie Carney for Defendant-, David Alberson et al., to Make Their Cross-petition More Definite and Certain.

Comes now the above named defendant Lottie Carney and through her attorney C. F. Green, moves the Court for an order requiring the other defendant- David Alberson, et al., to make their cross petition more definite and certain, in the following manner, to wit:

Show and set out fully the nature and extent of their interest in said estate; whether by reason of lawful wedlock, adoption or acknowledgement and show who the father and mother were of said heirs and how they are an heir of the said John Alberson, deceased.

Wherefore, the judgment of the Court is prayed sustaining this motion and that said defendants be required to comply therewith.

C. F. GREEN,

Attorney for Defendant Lottie Carney.

Endorsed: No. 1054. J. C. Chapman vs. David Alberson et al. Motion of Lottie Carney for Defendant Alberson to make cross-pet. more definite and certain. Filed Jun- 18, 1913. A. D. Tanner, District Clerk.

102 That thereafter and on the 26th day of July, 1913, there was filed in said cause Amended Answer of Lottie Carney which is and was in words and figures as follows, to-wit:

103 STATE OF OKLAHOMA,
County of Pontotoc, ss:

In District Court.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

Defendant Lottie Carney's Amended Answer to Amended Petition of Plaintiff.

Comes now the defendant Lottie Carney and for her separate answer to the amended petition of plaintiff, denies each and every material allegation contained therein, except such as are hereinafter specifically admitted.

II.

Defendant admits that the lands described in the amended petition of plaintiff are the lands of the deceased John Alberson and that said land was allotted to the said John Alberson as his proportional share of the tribal lands of the said tribe of Indians, and defendant further admits that the said John Alberson was a Son of said Louisa James, deceased, and also admits that the said John Alberson died some time during the Month of June, 1911, but specifically denies that the said Charles Puller was the father of the said John Alberson, deceased.

III.

Defendant further answering plaintiff specifically denies that the said Charles Puller and Louisa James were ever married by any authority of law, form, custom or otherwise, or was ever married at all.

IV.

104 Defendant further answering plaintiff, says, that the said Charles Puller, at the time of the birth of the said John Alberson, and for several years prior and subsequent thereto, had a living wife with whom he lived and cohabited, and denies that the said Charles Puller ever had any legal or equitable estate

in or to the lands the subject of this action and denies that plaintiff, by reason of claiming through the said Charles Puller, as aforesaid, has a-y legal or equitable estate therein and entitled to the possession thereof.

V.

Defendant further answering plaintiff, says, that the said Louisa James, the mother of the said John Alberson, during her life time up to and including the birth of the said John Alberson was never married to any one; that the said John Alberson was born out of lawful wedlock and that he was never acknowledged or adopted by any one other than his mother the said Louisa James.

VI.

Defendant further answering plaintiff would show to the Court, that she is the only heir at law of the said John Alberson, deceased; that her right to make said claim is as follows: that she is a sister of the said Louisa James, the mother of said John Alberson; that the defendant Lottie Carney and Louisa James are full sisters being the only children born to Dr. James and — James his wife; that both of said parents are long since dead, leaving no other heirs except the said Lottie Carney and Louisa James; that since the death of said parents and prior to the death of the said John Alberson, the said Louisa James died, leaving as her only heirs at law the said John Alberson and Lottie Carney; that thereafter during the month of June, 1911, the said John Alberson died, intestate, without issue or
105 ever having been married leaving no father, mother, brother, sister or any other living heir at law, except the defendant herein Lottie Carney, who is an aunt of the said deceased; that by reason of the said defendant Lottie Carney being the only heir at law of the said John Alberson, deceased, she is entitled to the entire estate named and set forth in plaintiff's amended petition and which the said John Alberson was seized of at the time of his death.

Wherefore, defendant Lottie Carney prays that upon a final hearing and trial of said cause that she have judgment, order and decree of this Court, decreeing that she is the only heir at law of the said John Alberson, deceased, and that she is the legal and equitable owner and entitled to the immediate possession of the following described real estate, to-wit:

"The N. E. $\frac{1}{4}$ and the N. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Sec. 6, and the S. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of Sec. 28, all in township 3 North Range 7 East of the Indian base and meridian, in Pontotoc County, Oklahoma, the same being the premises referred to in the amended petition of said plaintiff; that the said plaintiff nor any one holding under them have any right, title or interest in and to the premises described here in and that the said plaintiff or any one holding under them be perpetual-y and forever enjoined from interfering with her in the peaceable enjoyment of said prem-

ises and that the title to said lands be quieted in the said defendant Lottie Carney and that she have her costs expended in said action and all other just and equitable relief that the facts warrant; and that the deed from the said Charles Puller to plaintiff referred to in petition of plaintiff a copy of which is attached hereto marked "Ex. A" made a part hereof, be cancelled of record and held for naught.

C. F. GREEN,

Attorney for Defendant Lottie Carney.

106 STATE OF OKLAHOMA,
County of Pontotoc, ss:

Lottie Carney, of lawful age, being first duly sworn, on oath, says that she is the defendant above named; that she can neither read nor write, but that she has had the foregoing amended answer to the amended petition of the plaintiff filed in said cause, read to her and she understands the contents thereof, and that the facts set forth therein are true to the best of her knowledge and belief.

her

LOTTIE x CARNEY.

mark.

Witness to the signature of Lottie Carney, who could not write and at whose request I wrote her name to said amended answer.

MORRIS CARNEY.

R. P. FORD.

Subscribed and sworn to before me this 28 day of June 1913.

[SEAL.]

R. P. FORD,

Notary Public.

My commission expires the 21st day of March 1915.

Endorsed: No. 1015. J. C. Chapman vs. David Alberson et al. Amended Answer of Lottie Carney. Filed July 26th, 1913. A. D. Tanner, Dist. Clerk. Lien Claimed by C. F. Green, Att'y for Def. Lottie Carney.

107

Copy.

Know all men by these presents, that Charles Puller, a single man, of the County of Pontotoc, State of Oklahoma, part- of the first part, in consideration of the sum of Twelve Hundred fifty and no/100 dollars, (\$1250.00) in hand paid, the receipt of which is hereby acknowledged do grant, bargain, sell and convey unto J. C. Chapman of the County of Pontotoc State of Oklahoma, Part- of the second part, the following described real property and premises, situate in the County of Pontotoc, State of Oklahoma, to-wit:

"The N. E. $\frac{1}{4}$ and the N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Section six, and the S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of section 28, all in Township 3 North, Range 7 East, being the entire allotment of John Alberson

deceased a Chickasaw by Blood, Roll No. 409." together with all improvements thereon and appurtenances thereunto belonging and warrant the title to the same.

To have and to hold the said described premises unto the said party of the second part his heirs and assigns forever, free, clear and discharged of and from all former Grants, Charges, Taxes, Judgments, Mortgages and other Liens and Incumbrances of whatsoever nature.

Signed and delivered this 20th day of Jan. A. D. 1912.

CHARLES PULLER.

Acknowledgement.

STATE OF OKLAHOMA,
Pontotoc County, ss:

Before W. C. Duncan a Notary Public in and for said County and State on this 20th day of Jan. 1912, personally appeared Charles Puller to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that — executed the same as — free and voluntary act and deed for the consideration, uses and purposes therein set forth.

Witness my hand and Official seal the day and year above written.

W. C. DUNCAN,

Notary Public.

STATE OF OKLAHOMA,
County of Pontotoc:

This instrument was filed for record in my office at Ada Oklahoma, the 20th day of Jan. 1912 at 5 o'clock P. M. and duly recorded in Book No. 11 at page 508.

C. C. HARGISS,

Register of Deeds, Pontotoc County, Okla.

108 *Minutes Taken from Clerk's Journal 4, Page 592.*

No. 1015.

J. C. CHAPMAN

vs.

DAVID ALBERSON et al.

July 26th, 1913.

Motion of defendant Carney to make more definite and certain sustained as to Alberson children and they are granted 10 days to amend. Defendant Carney filed amended answer. Plaintiff granted 5 days after amended answered filed to reply.

109 That thereafter and on the 25th day of August, 1913, there was filed in said cause second amended petition which is and was in words and figures as follows, to-wit:

110 STATE OF OKLAHOMA,
County of Coal, ss:

In the District Court in and for the County and State Aforesaid.

No. 1015.

JOHN C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON, SINA ALBERSON, and SALINA ALBERSON, Minors,
by C. E. B. Cutler, Their Guardian ad Litem; Lottie Carney and
Tom Pendleton, Defendants.

*Amended Answer and Cross-petition of Defendants David Alberson,
Sina Alberson, and Salina Alberson, Minors, by C. E. B. Cutler,
Guardian ad Litem.*

Now comes David Alberson, Sina Alberson and Salina Alberson, three of the defendants, minors, by C. E. B. Cutler their Attorney, and for amended answer to the amended Petition of plaintiff, and after having obtained leave of Court, file this their second Amended Answer and Cross Petition, allege and show:

First. These defendants do deny each and every material allegation in the said plaintiff's petition (amended) made and contained, except such of said allegations as shall be hereinafter specially admitted.

Second. These defendants specially admit that the lands described in said amended petition of the plaintiff were allotted to John Alberson, who is now deceased, but they do deny specially that
111 the said lands or any portion thereof were inherited by Charles Puller, who is now deceased, from whom plaintiff acquired by warranty deed his claim of title and right of ownership and whom claimed to have inherited said lands from John Alberson, and do specially deny that the said Charles Puller is the father of John Alberson, deceased, and do specially deny that the plaintiff is entitled to the immediate possession of said lands or any portion thereof.

Wherefore, these defendants pray that the plaintiff herein take nothing by this action, and that these defendants here answering do have the appropriate judgment, order and decree of this Honorable Court, as hereinafter in their cross petition prayed for.

Amended Cross-petition.

And these defendants for their amended cross petition and in this their cross action against the plaintiff herein and against all the defendants other than these here answering, for their cause of action do allege and show:

First. That these defendants, David Alberson, Sina Alberson and Salina Alberson are the sole owners in law and equity of the fee simple estate in and to the following described real estate, the same being mentioned and described in the plaintiff's amended petition, namely:

North East Quarter of the North East Quarter of the South East Quarter of Section six the South West Quarter of the South West Quarter of Section Twenty Eight, all in Township three North, Range Seven East.

That the said lands were allotted to one John Alberson, who was a member of the Chickasaw Nation or Tribe of Indians as his homestead and surplus allotment, and that these defendants were
112 the sole heirs and next of kin of the said John Alberson at the time of his death, and that by virtue of such inheritance and relationship these defendants, and they alone, are the owners of the real estate hereinabove particularly described.

That one Robert Alberson, a member of the Chickasaw tribe or nation of Indians, enrolled as No. 407 was the father of John Alberson, deceased, who was enrolled as a member of same tribe at 409, to whom the foregoing land was allotted; that Robert Alberson was the father of David, Sina, and Salina Alberson, the parties to this action claiming said lands.

Second. That the defendants Lottie Carney and Tom Pendleton, and each of them are making some claim of right, title or interest in and to the said premises and every portion thereof and that the exact nature of such claim is to these defendants unknown but that the said claim so made by the said co-defendants are in derogation of, adverse to, and a cloud upon the title of these defendants, and that these defendants are entitled to the appropriate order of this Court requiring each of the said co-defendants to appear herein and to set up and disclose their claims of right, title or interest in and to the said real estate so the same may be here adjusted, and furthermore, that upon final determination of this cause, these defendants are entitled to the appropriate judgment and decree of this Court, removing, setting aside and holding for naught the cloud of every such claim upon the title of these defendants, cancelling and holding void any conveyance or other evidence of title relied upon by the said plaintiff and co-defendants.

Wherefore, the premises considered these defendants pray that upon the final determination of this cause, they do have the appropriate judgment, order and decree of this Court, decreeing in
113 them the sole ownership and title, legal and equitable, in and to the said real estate above described, forever barring and estopping the plaintiff herein and the co-defendants of these defendants from claiming, asserting, making or declaring any right, title or interest in or to the said lands or any part thereof, or any participation in the use, occupancy or enjoyment of the said lands or any portion thereof, and that these defendants do have judgment against the said plaintiff and the said co-defendants for all the costs of this action, in such amounts and proportions as to this Honorable Court shall seem fit, and that these defendants do have such other and

further relief of this Honorable Court as shall be equitable in the premises. For all of which in duty bound these defendants do ever pray.

Attorney for Said Defendants.

Endorsement of Second Amended Petition: No. 1015. John C. Chapman, Plaintiff, vs. David Alberson et al., Defendants. Second Amended Petition. Filed Aug. 25th, 1913, A. D. Tanner, Dist. Clerk.

114 That thereafter and on the 30th day of August, 1913, and refiled on the 15th day of September separate answer of Tom Pendleton and L. M. Chandler to the second amended cross petition of Albersons, which is and was in words and figures as follows, to-wit:

115 STATE OF OKLAHOMA,
County of Pontotoc, ss:

In District Court.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON, SINA ALBERSON, and SALINA ALBERSON, Minors,
LOTTIE CARNEY, and TOM PENDLETON, Defendants.

Separate Answer of Lottie Carney to the Second Amended Cross-petition of Defendants David Alberson, Sina Alberson, and Salina Alberson, Minors.

Comes now Lottie Carney, one of the defendants above named and for a separate answer to the second amended cross petition of defendants David Alberson, Sina Alberson and Salina Alberson, minors filed herein on the 25th, day of August, 1913, denies each and every material allegation therein contained, except such as are hereinafter specifically admitted.

II.

Defendant Lottie Carney admits that the lands described in the second amended cross petition of said defendants, are the lands allotted by the said John Alberson, deceased, as his proportional share of the tribal lands of the said tribe of Indians, and that the said John Alberson died seized of said lands in fee simple.

III.

Defendant Lottie Carney further answering the second amended cross petition of said defendants, specifically denies that the

116 said Robert Alberson is the father of John Alberson, deceased; denies that David Alberson, Sina Alberson and Salina Alberson or either of them are the owners in law or equity of the lands described in said second amended cross petition or that they are the next of kin and the sole heirs, or that they are of any degree of kin to the said John Alberson, deceased, whatever, and denies that defendant Lottie Carney with holds the possession of said lands from said defendants.

IV.

Defendant Lottie Carney by way of an affirmative defense to the Second cross petition of defendants filed herein, states that Louisa James is the mother of the said John Alberson, deceased; that the said John Alberson was born out of lawful wedlock, his mother, the said Louisa James, prior to the birth of the said John Alberson, having never been married to any one, and that the said John Alberson was never adopted or acknowledged by any one, other than his mother, the said Louisa James.

V.

As a further affirmative defense to the second amended cross petition of defendants filed herein, defendant Lottie Carney states, that she is the only heir at law of the said John Alberson, deceased; that her right to make said claim is: that she is an only sister of the said Louisa James, the mother of said John Alberson; that defendant Lottie Carney and Louisa James are full sisters, being the only children born to Dr. James and — James his lawful wife; that both of said parents are long since dead, leaving no other heirs except the said Lottie Carney and the said Louisa James; that since the death of the said parents and prior to the death of the said John Alberson, the said Louisa James died, leaving as her only
117 heirs at law the said John Alberson and Lottie Carney; that thereafter during the month of June, 1911, the said John Alberson died, intestate, without issue or ever having been married, leaving no father, mother, brother, sister or any other living heir at law, except the defendant herein Lottie Carney, who is an only aunt of the said deceased; that by reason of the said defendant Lottie Carney being the only heir at law of the said John Alberson, deceased, she is entitled to the entire estate named and set forth herein and in the second amended cross petition of defendants, and which the said John Alberson died seized of in fee simple.

Wherefore, defendant Lottie Carney prays the Court that upon a final hearing and trial of said cause that she have judgment, order and decree of this Court, decreeing that she is the only heir at law of the said John Alberson, deceased, and that she is the legal and equitable owner and entitled to the immediate possession of the following described real estate, to-wit:

“The N. E. $\frac{1}{4}$ and the N. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Sec. 6, and the S. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of Section 28, all in

Township 3 North, Range 7 East of the Indian base and Meridian, in Pontotoc County, Oklahoma, the same being the premises referred to in the second amended cross petition of said plaintiff; that the said defendants David Alberson, Sina Alberson and Salina Alberson nor any one holding under them have any right, title or interest in and to the premises described herein and that the said defendants or any one holding under them be perpetually and forever enjoined from interfering with her in the peaceable enjoyment of said premises and that the title to said lands be quieted in the said defendant Lottie Carney and that she have her costs expended in said action and all other just and equitable relief that the facts warrant.

Second. That in case the Court finds that the said Robert Alberson is the father of the said John Alberson, deceased, and that the said defendants David Alberson, Sina Alberson and Salina Alberson have an interest in said estate, that the Court adjudge and decree that defendant Lottie Carney is entitled to a one half undivided interest in and to said described real estate by reason of the relationship to the said John Alberson as aforesaid.

C. F. GREEN,
Attorney for Lottie Carney.

Endorsed: No. 1015. J. C. Chapman vs. David Alberson et al. Separate Answer of Lottie Carney to 2nd Amended Cross-petition of Alberson Heirs. Filed Aug. 30th, 1913. A. D. Tanner, Dist. Clerk. Lien Claimed by C. F. Green Att'y for Carney. Refiled Sept. 15th, 1913. A. D. Tanner, Dist. Clerk.

That thereafter and on 30th day of August 1913 there was filed in said cause and refiled on the 15th day of Sept. 1913, separate answer of Lottie Carney to second amended cross-petition of Alberson Heirs which is and was in words and figures as follows, to-wit:

STATE OF OKLAHOMA,
County of Pontotoc, ss:

In District Court.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

Answer of Defendants Tom Pendleton and L. M. Chandler to the Second Amended Cross-petition of Alberson Defendants.

Comes now Tom Pendleton and L. M. Chandler and for their separate answer to the second amended cross petition of defendant David Alberson, Sina Alberson and Salina Alberson, filed herein on the 25th, day of August, 1913, they asks the court to adopt their

seperate answer filed in said cause to the amended petition of the plaintiff J. C. Chapman, on the 3rd, day of October 1912, as their answer to the second amended cross petition as aforesaid.

C. F. GREEN,

Attorney for Tom Pendleton and L. M. Chandler.

Endorsed: No. 1015. J. C. Chapman vs. David Alberson et al. Seperate answer of Tom Pendleton and L. M. Chandler to the 2nd ans. cross-pet. of Alberson. Filed Aug. 30th, 1913. A. D. Tanner, Dist. Clerk. Re-filed Sept. 15, 1913. A. D. Tanner, Dist. Clerk.

121 That thereafter and on the 10th day of September 1913, there was filed in said cause third amended answer and cross petition, which is and was in words and figures as follows, to-wit:

122 STATE OF OKLAHOMA,
County of Pontotoc, ss:

In the District Court in and for said County and State Aforesaid.

No. 1015.

JOHN CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON, SINA ALBERSON, SALINA ALBERSON, LOTTIE CARNEY, and TOM PENDLETON.

Third Amended Separate Answer and Cross-petition of Defendants David Alberson, Sina Alberson, and Salina Alberson.

Now comes David Alberson, Sina Alberson and Salina Alberson, three of the defendants in the above styled and numbered cause by C. E. B. Cutler, their attorney, and after having obtained leave of Court files this their Third Amended Separate Answer and Cross Petition to the Amended Petition of Plaintiff, and for their Third Amended Separate Answer allege and show:—

1.

That for some time prior to September 3, 1913, the said David Alberson, Sina Alberson and Salina Alberson were minors. That they were represented by Guardians by the following named persons, Willis Monroe, W. T. Jones and Steve Morgan. That each of said Guardians were appointed by authorities of the County Court of Pontotoc and Coal Counties. That now the said David Alberson is the age of twenty-one (21) years, and the said Sina Alberson is of the age of eighteen (18) years and the said Salina Alberson
123 is of the age of eighteen (18) years. That the said David Alberson is a male and the said Sina and Salina Alberson are females. and that they and each of them appear in their proper person to defend and prosecute in the foregoing action.

2.

That these defendants do deny each and every material allegation in the plaintiff's amended petition made and contained except such of said allegations as shall be hereinafter specially admitted.

3.

That defendants specially admit that the land- described in said amended petition of plaintiff were allotted to John Alberson, who is now deceased; but that it is specially denied that the said lands or any portion thereof were inherited by Charles Puller, who is now deceased, from whom plaintiff acquired by warranty deed his claim of title and right of ownership and who claimed to have inherited said lands from John Alberson and do specially deny that the said Charles Puller is the father of John Alberson, deceased, and do specially deny that the plaintiff is entitled to the immediate possession of said lands or any portion thereof.

Wherefore these defendants pray that the plaintiff herein take nothing by this action and that these defendants herein answering do have the appropriate judgment, order and decree of this Honorable Court as hereinafter in their cross petition prayed for.

Third Amended Cross-petition of Defendants David Alberson, Sina and Salina Alberson.

And these defendants for their Third Amended cross petition and in this their cross petition against the plaintiff herein and against all of the defendants other than these herein answering for their cause of action do allege and show:

That these defendants David Alberson, Sina Alberson and Salina Alberson are the sole owners in law and equity of the fee simple estate in and to the following described real estate. The same being mentioned and described in the plaintiff's amended petition, namely:—The N. E. $\frac{1}{4}$ and the N. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Section 6, and the S. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of Section 28, all in Township 3 North, Range 7 East, of the Indian Base and Meridian in Pontotoc County, Oklahoma. That the said lands were allotted to one John Alberson, who was a member of the Chickasaw tribe or nation of Indians as his homestead and surplus allotment; and these defendants were the sole heirs and next of kin of the said John Alberson at the time of his death; and that by virtue of such inheritance and relation-ship these defendants and they alone are the owners of the real estate hereinabove particularly described.

2.

That the said John Alberson died intestate leaving no father or mother surviving him or any other heir at law or next of kin except the defendants herein answering, David Alberson, Sina Alberson and Salina Alberson, who are brother and sisters of the said deceased.

That one Robert Alberson, a member of the Chickasaw Nation or Tribe of Indians who is enrolled as No. 407 was the father of John Alberson, deceased, who was enrolled as a member of same tribe at No. 409, to whom the foregoing land was allotted by reason of his citizenship in the Chickasaw Tribe or Nation of Indians; that the same Robert Alberson, enrolled as above set out and numbered is the father of David Alberson, Sina Alberson and Saline Alberson, defendants herein answering.

125 That John Alberson, deceased, was recognized and acknowledged by Robert Alberson as his son during his lifetime and during the lifetime of the said John Alberson and that the said John Alberson during his lifetime was recognized and acknowledged by David Alberson, Sina Alberson and Salina Alberson as their brother.

That one Louisa James, the mother of John Alberson, entered into a contract of marriage with the said Robert Alberson father of these defendants. That by reason of said contract or agreement of marriage by and between the said Robert Alberson and Louisa James and after entering into the contract and agreement of marriage aforesaid the said John Alberson was born. The father of John Alberson was Robert Alberson and the mother of the said John Alberson was Louisa James. That both Robert Alberson and Louisa James are dead.

3.

That the defendants Lottie Carney and Tom Pendleton and each of them are making some claim of right, title or interest in and to said premises and every portion thereof, and that the nature of such claim is to these defendants unknown; but that the said claim- so made by the said co-defendants are in derogation of, adverse to, and a cloud upon the title of these defendants and that these defendants are entitled to the appropriate order of this Court requiring each of the said co-defendants to appear herein and to set up and disclose their claim of right, title or interest in and to the said real estate so that the same may be here adjudged, and further more that upon
126 final determination of this cause these defendants are entitled to the appropriate judgment and decree of this Court removing, setting aside, and holding for naught the cloud of every such claim upon the title of these defendants, cancelling and holding void any conveyance or other evidence of title relied upon by the said plaintiff and co-defendants.

Wherefore, the premises considered, these defendants pray that upon the final determination of this cause that they do have the appropriate judgment, order and decree of this Court, decreeing in them the sole ownership and title, legal and equitable, in and to the said real estate above described, forever barring and estopping the plaintiff herein and the co-defendants of these defendants from claiming, asserting, making or declaring any right, title or interest in or to the said lands or any part thereof or any participation in the use, occupancy or enjoyment of said lands or any portion thereof; and that these defendants do have judgment against the said plaintiff and the said co-defendants, for all the costs of this action in such amounts and portions as to this Honorable Court shall seem proper; and that these defendants do have such other and further relief of this Honorable Court as shall be equitable in the premises. For all of which in duty bound these defendants do ever pray.

C. E. B. CUTLER,
Attorney for the Defendants.

Endorsement: No. 1015. John Chapman, Plaintiff, vs. David Alberson et al., Defendants. Third amended answer and cross-petition. Filed Sept. 10th, 1913. A. D. Tanner, Dist. Clerk.

127 That thereafter and on the 10th day of November, 1913, there was filed in said cause a reply which is and was in words and figures as follows, to-wit:

128 In the District Court of Pontotoc County, Oklahoma.

No. 1015.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

Reply.

Comes now the defendants, David Alberson, Sina Alberson and Salina Alberson, each for himself for reply to the answer of Lottie Carney, Tom Pendleton and L. M. Chandler herein deny each and every allegation therein contained.

C. E. B. CUTLER,
*Attorney for David Alberson, Sina Alberson,
and Salina Alberson, Defendants.*

Endorsement of reply: No. 1015. J. C. Chapman, Plaintiff, vs. David Alberson et al., Defendants. Reply. Filed Nov. 10, 1913. A. D. Tanner, Clerk of District Court of Pontotoc County, Oklahoma.

129 That thereafter and on the 10th day of November, 1913, there was filed in said cause a reply which is and was in words and figures as follows, to-wit:

130 In the District Court of Pontotoc County, Oklahoma.

No. 1015.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

Reply.

Comes now the plaintiff, J. C. Chapman, and for reply to the answer of Lottie Carney, Tom Pendleton, L. M. Chandler, David Alberson, Sina Alberson and Salina Alberson herein, deny each and every allegation therein contained.

WIMBISH & DUNCAN,
Attorneys for Plaintiff.

Endorsement of reply: No. 1015. J. C. Chapman, Plaintiff, vs. David Alberson et al., Defendants. Reply. Filed Nov. 10, 1913. A. D. Tanner, Dist. Clerk.

131 That thereafter and on the 10th day of November, 1913, there was filed in said cause a motion for continuance, which is and was in words and figures as follows to-wit:

132 In the District Court of Pontotoc County, Oklahoma.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

Motion for Continuance.

Comes now J. C. Chapman, plaintiff in the above entitled cause, and states to the court that he cannot at this time safely go to trial on account of the absence of the following named witnesses whose testimony is material to his case, to-wit: D. P. Harrison, Levi Brown and Gincy Carney, for the purpose of showing the materiality of the testimony of said witnesses.

Plaintiff states that this suit involves the question of heirship of John Alberson, deceased. It is contended by the plaintiff in this case that one Charles Puller was the father of said John Alberson, deceased, and that he is his sole and only heir at law, and as part and parcel of his case it devolves upon him to show that said Charles Puller and Louisa James, just prior to the birth of said John Alberson had been living together as husband and wife, and that said John Alberson was born as the result of said marital relation, and that afterwards the said John Alberson was recognized by the said Louisa James and Charles Puller to be the said Charles Puller's child. That

is denied by all of the defendants herein, and the plaintiff expects to prove by the witness D. P. Harrison that he was well acquainted with said parties, and had known them for many years and that he knew

that said parties, *and had known them for many yeards and*
133 *that he knew that said parties* had lived together as husband and wife. Plaintiff further expects to prove by said D. P. Harrison that during the time in which the Indians were filing on their lands in this country that Charles Puller and said D. P. Harrison traded lands and that the said Charles Puller traded to D. P. Harrison the improvements on and possession of certain lands near Ahlosa for the improvements and possession of the lands now in controversy; that at the special instance and request of said Charles Puller, after he and said witness had so traded, said witness furnished to Robert Alberson, with whom the said John Alberson was then living, a plat of said lands by which he could file thereon and that subsequently the said Robert Alberson did actually file on said lands for the said John Alberson deceased.

The plaintiff expects to prove by the witness Levi Brown, that he was well acquainted with Charles Puller and Louisa James, and he knows that shortly prior to the time that said John Alberson was born, that the said Charles Puller and Louisa James lived together as man and wife at one Nicy Cahee's and that they were regarded in the community in which they lived at said time as husband and wife.

The plaintiff expects to prove by Gincy Carney that the said Louisa James told her, while the said John Alberson was still a small child, that Charles Puller was his father.

Plaintiff would further state to the court that the said Gincy Carney, Levi Brown and D. P. Harrison were each of them summoned on or about the 3rd or 4th day of November, 1913. That each reside- in Pontotoc County, Oklahoma.

Plaintiff would further state to the Court that the said D. P. Harrison had promised to be in attendance on court, but he
134 is informed, and on that information believes and so states, that he was called to Oklahoma City on account of the serious illness of his child, and that he has been detained by reason thereof, and therefore unable to be present. That since the preparation of this motion plaintiff is informed that said D. P. Harrison has returned to Stonewall and is there now.

Plaintiff would further state that said witnesses live in this county and at a future term he will be able to have all of said witnesses present.

Wherefore the plaintiff prays that said cause be continued for this term of the court.

J. C. CHAPMAN.

STATE OF OKLAHOMA,
Pontotoc County, ss:

J. C. Chapman, being first duly sworn on oath states, that he is plaintiff in the above styled cause, that he is familiar with the facts

set forth in the foregoing application for continuance, and that the matters and facts therein set forth are true and correct.

J. C. CHAPMAN.

Subscribed and sworn to before me this the 10th day of November, 1913.

A. D. TANNER,
Clerk District Court.

Endorsed: Filed Nov. 10th, 1913. A. D. Tanner, Dist. Clerk.

135 *Minutes Taken from Clerk's Journal.*

No. 1015.

J. C. CHAPMAN

VS.

DAVID ALBERSON et al.

Nov. 10th, 1913.

Motion for continuance of Plaintiff presented. Cause continued until Nov. 11th, at nine o'clock. Defendant Carney excepts to filing replies.

136 *Minutes Taken from Clerk's Journal.*

No. 1015.

J. C. CHAPMAN

VS.

DAVID ALBERSON et al.

Nov. 11th, 1913.

Plaintiff presents motion for continuance. Motion overruled with agreement of counsel that statement of Levi Brown and Gincy Carney may be read to the jury. No agreement as to Daniel Harrison. Trial proceeds. Jury empaneled and sworn.

137 In the District Court of Pontotoc County, Seventh Judicial District, State of Oklahoma.

Cause No. 1015.

J. C. CHAPMAN, Plaintiff,

VS.

DAVID ALBERSON et al., Defendants.

Hon. Tom D. McKeown, Judge; A. D. Tanner, District Clerk; J. B. Gilbreath, Reporter.

Attorneys for Plaintiff: Wimbish & Duncan.

Attorneys for Defendants Lottie Carney and Tom Pendleton: C. F. Green, J. W. Bolen.

Attorneys for Defendants Alberson Heirs: C. E. B. Cutler.

138 And thereupon: To-wit on the 10th day of November, 1913, and November 11th, 1913, the same being *one* of the regular Judicial days of the November, 1913, — of the District Court in and for the County of Pontotoc, State of Oklahoma, held by Hon. Tom D. McKeown, Judge thereof, the following officers of the Court being present to-wit: Hon. Tom D. McKeown, Judge, A. D. Tanner, District Clerk, L. E. Mitchell, Sheriff, and J. B. Gilbreath, District stenographer, this cause coming on for trial on its merits in its regular order, the plaintiff appearing in person and by his attorneys, Wimbish & Duncan, and the defendants Lottie Carney and Tom Pendleton appearing in person and by their attorneys, C. F. Green and J. W. Bolen, and the defendants Alberson heirs appearing by their attorney C. E. B. Cutler, the following proceedings were had and testimony taken:

1. November 10th, 1913. Plaintiff files a motion for continuance; cause passed until tomorrow morning November 11th, 1913, at 8:30 A. M.

2. Cause called for trial November 11th, 1913. Counsel for the defendants agree that the motion for continuance may be read as to what Levi Brown and Gincy Carney would testify to; And counsel for the plaintiff states that they are not insisting on the motion for continuance as to Daniel Harrison at this time, as they believe they will have him here, and do not waive the right in case he does not come to present the matter again.

3. Cause proceeds to trial.

4. Twelve jurors called by Clerk, from the regular panel, and are sworn to answer questions touching their qualifications as jurors to sit in this case.

139 *(Part of the Examination of the Jurors—That Part Objected To.)*

C. E. RECTOR (Juror).

By Mr. BOLEN:

Q. Your relation such toward Mr. John Chapman that it would embarrass you to bring in a verdict against him?

A. Yes.

By Mr. Wimbish:

Q. While you are well acquainted with Mr. Chapman, and as you stated you would not like to have to bring in a verdict against him, if the law and the testimony warranted it, would you hesitate simply on account of your acquaintance from returning a verdict under the law and the evidence as you would take an oath to do in trying the case?

A. Rather not.

Q. Could you do it?

A. Could do it, yes sir.

Q. Would you do it?

A. Yes I would, if the testimony showed it.

Q. If the testimony showed the other fellows entitled to a verdict you would give them the benefit of it?

A. Yes.

Q. You never heard the facts of the case enough that you expressed any opinion?

A. No sir.

By Mr. Bolen:

Q. Your relation such toward Mr. Chapman that it would embarrass you to return a verdict against him.

A. Just like I told Mr. Wimbish, be according to the evidence; I said, I rather not.

140 Q. You told me at first it would embarrass you. Your feeling such toward Mr. Chapman that you would not want to bring in a verdict against him on account of your friendship toward him?

A. Yes sir.

Q. And you would go in the jury box with that feeling about it?

A. Yes sir.

Q. That feeling toward Mr. Chapman?

A. Yes sir.

Q. And we would have to remove that feeling, the defendants would by the evidence?

A. Yes sir.

By Mr. Bolen: The defendants challenge the juror for bias.

By the Court:

Q. You feel that you would hesitate to return a verdict if the law and the evidence warranted it, on account of your friendship for him?

A. That is what I said at first, I would not like to serve on the jury on that account.

Q. Feel there would be some embarrassment to you?

A. Yes sir.

By Mr. Cutler:

Q. Mr. Rector, if you were taken as a juror in this cause, would you disregard all the evidence in the cause, because of your friendship to Mr. Chapman?

A. No sir, if I was held on the jury I would go according to the evidence and the law.

Q. Would you go according to the evidence and the law?

A. Yes sir.

Q. And put the friendship of Mr. Chapman aside?

A. Yes.

141 By Mr. Wimbish:

Q. As I understand, you are friendly toward Mr. Chapman and don't want to sit on this case?

A. Yes.

Q. But if the Court holds you are qualified to sit in this case you can and will return a verdict according to the testimony and law, regardless to your friendship for Mr. Chapman or anybody else in the case?

A. Yes sir.

By Mr. Bolen:

Q. You mean you would try to do that?

A. I mean I would go according to the evidence.

By the Court: The juror is qualified. Challenge overruled.

By Mr. Bolen: The defendants Carney and Pendleton except.

(Another juror who was challenged and exception was saved—part of examination as follows:)

AUGUST FISCHBACK.

By Mr. Bolen:

Q. You interested in an estate in which Mr. Chapman is administrator?

A. Yes; Mr. Chapman is administrator of the estate of my wife's brothers and sisters.

Q. Your relation such with Mr. Chapman it would embarrass or might embarrass you to render a verdict against him?

A. Have had a good deal of friendly business dealing. Be hard for me to do, but I would stay with the law and the evidence.

Q. You mean you would try to stay with the law and the evidence, you don't know whether you could disregard your feeling or not, do you; your feeling might work on you unconsciously?

142 A. I don't think so.

Q. I will ask you this question, if on account of your feel-

ing toward Mr. Chapman, if you would not be inclined to lend a more friendly hearing to his evidence than you would to some evidence and witnesses you did not know?

A. No sir.

Q. Don't think you would?

A. No sir.

Q. You think you could disregard your friendship entirely and try him just like you did not like him at all, you think you could do that?

A. Yes.

Q. You know you could do it?

A. Yes sir.

Q. Hurt your feelings to have to return a verdict against him, wouldn't it Mr. Fischback?

A. Might do that.

Q. Then you have got bias toward Mr. Chapman on account of your friendship; in the absence of any evidence at all, the way the case now stands, you have a bias toward Mr. Chapman?

A. Yes sir.

By Mr. Bolen: Challenge the juror for bias.

Defendant Lottie Carney challenges the juror for bias.

143 By Mr. Cutler:

Q. Mr. Fischback has Mr. Chapman ever talked to you any about this case?

A. No sir.

Q. Do you know, ever hear of—anybody ever tell you anything about John Alberson, allottee in this case?

A. No sir.

Q. You know the Alberson heirs, two girls and a boy?

A. No sir.

Q. Now if you were taken as a juror in this case, would you simply ignore all the testimony in this case, and go out and find a verdict for Mr. Chapman because you knew him?

A. No sir.

Q. You meant to state you would go by the law and the evidence; while you are friendly to Chapman you would return a verdict against him if the testimony warranted it?

A. Yes sir.

Q. Ever have any loss over land in this county?

A. No sir.

Q. You acquainted with Bolen and Green here?

A. Yes.

Q. Ever perform any legal services for you?

A. Yes.

Q. Any feeling in that relation that be inclined to lean toward their side of the case?

A. No sir.

Q. Same way with Messrs. Wimbish & Duncan?

A. No sir.

Q. Not trying this case by what the lawyers say, but *but* the law and the evidence?

A. Yes.

144 By Mr. Wimbish:

Q. You stated a while ago when Mr. Bolen asked you if you had bias for Mr. Chapman and you said yes; you mean you be bias- toward him in this case or friendly toward him?

A. Friendly toward him.

Q. Would you, in this case, disregard your friendship and try this case according to the law and the evidence?

A. Yes sir.

Q. You did not mean to say then, a while ago, you were biased in favor of Chapman in this case, did you?

A. No sir.

Q. You meant you were friendly toward him and that was all, that if you regard he was wrong and the other fellow was right in the case, your friendship not so warm for him you would disregard the evidence, is it?

A. No sir.

By the Court: Any objection to the challenge.

By Mr. Wimbish: We object to it.

By Mr. Cutler: We don't object to it.

By Mr. Wimbish: We object to the challenge.

By Mr. Cutler: We object to the challenge.

By the Court:

Q. Would you go—if you were selected as a juror in this case,—would you go in the jury box with your mind inclined to Mr. Chapman's side of the case, simply because you are good friends, or would you go in the case and try it according to the law and the evidence as you heard it from the witnesses and the law as given you by the Court.

A. Law and the evidence.

145 Q. Would you hesitate to decide this case, if the evidence warranted it, or the law justified it, to return a verdict against Mr. Chapman simply because of your friendship toward him?

A. Hard to do, but I would do what was right according to the law and the evidence, as near as I could see what was right.

Q. Would your friendship in this case enter into your deliberation in the case; that is, would you take the friendship you have for Mr. Chapman in your deliberations in this case, in trying the case?

A. I don't think I would.

Q. Could you, if selected as a juror in this case, go in the trial of it with any pre-disposition to lean toward Mr. Chapman on account of your friendship toward him?

A. No sir.

Q. Would you let the friendship for Mr. Chapman influence you in weighing this testimony in this case, that is to say, would you permit your friendship to allow you to get more inclined to give more

credence to his side of the case than you would to the other side or the other parties, simply because of your friendship?

A. No sir.

Q. If you were selected as a juror would you go in the case and try the case and heard the testimony of the witnesses as though Mr. Chapman was not a party to the suit?

A. Yes sir.

By the Court: Challenge overruled.

By Mr. Bolen: The defendants Carney and Pendleton except.

146 (Jury selected and sworn to try the case.)

All of the witnesses both for the plaintiff and the defendants called and sworn and the rule invoked.

Mr. Wimbish makes statement for the plaintiff.

By — Cutler: Makes statement for Alberson heirs.

Mr. Green makes statement for the defendants Carney and Pendleton.

147 *Plaintiff's Evidence.*

Agreement.

It is admitted by all of the parties to this lawsuit that John Alberson died intestate in Pontotoc County, Oklahoma.

By Mr. Wimbish: We offer in evidence Plaintiff's Exhibits A and B.

By Mr. Green: We have no objection.

By Mr. Cutler: We have no objection.

By the Court: Let them be admitted.

By Mr. Green: We would like to object to the introduction of any testimony on the part of the plaintiff J. C. Chapman for the reason the first paragraph of said petition fails to state facts sufficient to constitute a cause of action against the defendant Lottie Carney, for the reason the same is duplicitious and fails to inform the said defendants of what they might be expected to meet in said cause; that the said paragraph has been heretofore challenged by demurrer.

By the Court: Objection overruled.

By Mr. Green: Defendant Lottie Carney excepts.

148 PLAINTIFF'S EXHIBIT No. 1.

Warranty Deed.

Know all men by these presents, that Charles Puller, a single man, of the County of Pontotoc, State of Oklahoma, party of the first part, in consideration of the sum of twelve Hundred fifty and no/100 (\$1250.00) Dollars, — in hand paid, the receipt of which is hereby acknowledged do Grant, Bargain, Sell and Convey unto J. C. Chapman, of the County of Pontotoc, State of Oklahoma

party of the second part, the following described real property and premises, situate in the County of Pontotoc, State of Oklahoma to-wit: The N. E. $\frac{1}{4}$, and the N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Sec. Six; and the S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 28, all in Twp. 3 North, Range 7 East, being the entire allotment of John Alberson deceased, a Chickasaw by Blood, Roll No. 409, together with all improvements thereon and appurtenances thereunto belonging, and warrant the title to the same.

To have and to hold the said described premises unto the said party of the second part, his heirs and assigns, forever, free, clear and discharged of and from all former Grants, Charges, Taxes, Judgments, Mortgages and other Liens and Incumbrances of whatsoever nature.

Signed and delivered this 20th day of Jan. A. D. 1912.

CHARLES PULLER.

Acknowledgment.

STATE OF OKLAHOMA,
Pontotoc County, ss:

Before me, W. C. Dunca, a Notary Public in and for said County and State on this 20th day of Jan. 1912, personally appeared Charles Puller, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed 149 for the consideration, uses and purposes therein set forth.

Witness my hand and official seal the day and year above written.

W. C. DUNCA,
Notary Public, Pontotoc County, Oklahoma.

My commission expires 1st day of Oct. 1912.

Endorsement: Warranty Deed from Charles Puller to J. C. Chapman.

STATE OF OKLAHOMA,
Pontotoc County, ss:

This instrument was filed for record in my office at Ada, Oklahoma, the 20th day of Jan. 1912 at 5 o'clock P. M. and duly recorded in Book No. 11 at page 508.

Fees \$1.00.

C. C. HARGIS,
Register of Deeds, Pontotoc County, Oklahoma.

Have Your Lands Abstracted by Home Title Guaranty Co., Incorporated, Bonded Abstractors, Ada, Oklahoma.

A. H. Constant, Manager.
J. C. Chapman.

150

PLAINTIFF'S EXHIBIT B.

In the County Court of Pontotoc County.

In the Matter of the Estate of JOHN ALBERSON, Deceased; CHARLES PULLER, Administrator.

On this the 20th day of Jan. 1912, came on to be heard in open Court before Conway O. Barton, County Judge of Pontotoc County, the petition of Charles Puller, to have approved his deed bearing date on the 28th day of Dec. 1911, whereby in consideration of the sum of \$1250.00 he conveys to J. C. Chapman, the following described lands, situated in Pontotoc County, Oklahoma, to-wit:

The N. E. $\frac{1}{4}$ and the N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Sec. 6, and S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 28, all in Town, 3 North, range 7 East, being the entire allotment of John Alberson deceased, who was a Chickasaw by blood, Roll #409, and the Court, after hearing the testimony offered in support of said petition, and being fully advised in the premises finds that the said Charles Puller is a full blood Chickasaw Indian and acquired his interest in said lands by inheritance from his son, John Alberson, deceased, that said John Alberson died in Pontotoc County, Oklahoma, where he then resided and made his home on or about the — day of July, 1911, and that he left surviving him, no wife, no children nor issue of any children, no brothers or sisters nor issue of any brothers or sisters, that the said Charles Puller was his sole and only heir at law; and the Court further finds that the consideration for said land is the actual consideration paid to said Charles Puller, and is an adequate amount therefor, and that it is for the best interest for Charles Puller, that said deed be approved.

Wherefore it is ordered, adjudged and decreed by the Court that said sale and said deed be, and the same are hereby approved.

Done in open Court on this 20th day of Jan. 1912.

CONWAY O. BARTON,
County Judge.

Attached thereto:

Certificate of Record.

STATE OF OKLAHOMA,
Pontotoc County, ss:

I, C. C. Hargis, Register of Deeds of Pontotoc County, Oklahoma, do hereby certify that the instrument hereto attached was filed for record in my office at Ada, in the County and State aforesaid, on the 30 day of January A. D. 1912, at 11 o'clock A. M., and duly recorded in Misc. Record, Vol. 8 at page 62.

Witness my hand and seal of office at Ada, Pontotoc County, Oklahoma, this the 23 day of Feb. A. D. 1912.

[SEAL.]

C. C. HARGIS,
Register of Deeds,
By D. W. SWAFFAR, Deputy.

Attached thereto:

Certificate of True Copy.

STATE OF OKLAHOMA,
Pontotoc County:

I, Zayda Campbell, Ex-officio Clerk of the County Court, in and for the County and State aforesaid, do hereby certify, that the instrument hereto attached is a full, true and correct copy of Order approving deed as the same now appears of record in this office.

Witness my hand and the seal of said Court, at Ada, Oklahoma, on this 20 day of Jan. 1912.

[SEAL.]

ZAYDA CAMPBELL,
Ex-Officio Clerk of the County Court.

152 By Mr. Bolen: If the Court please, we want to object to the introduction of that deed, or order of the Court either, for the reason there is no evidence before the Court that the County Court ever had jurisdiction of the subject matter or parties, and had no authority to act on the question of transfer; purported to be made by this deed.

By the Court: Objection overruled.

By Mr. Bolen: The defendant Lottie Carney excepts.

Gib Clark Sworn as interpreter; agreed on by both sides.

153

SUSANA CONNO-HO-TUBBY.

Gib Clark, Interpreter.

Direct examination.

By Mr. Wimbish:

Q. State your name?

A. Susana Connohotubby.

Q. How old are you?

A. Don't know sir how old I am.

Q. Were you acquainted with Chas. Puller in his life time?

A. Yes sir.

Q. Were you acquainted with a woman called Louisa James?

A. Yes.

Q. State if you know whether or not Charles Puller and Louisa James ever lived together as husband and wife?

By Mr. Bolen: Objected to, called for a conclusion.

By the Court: Objection overruled.

By Mr. Bolen: The defendants except.

A. Lived back that way some-where, place called the Springs, but while they were living together they were living with we.

Q. During the time they lived with you, state to the jury whether or not they or either of them, told you they were husband and wife?

A. Didn't say, neither one of them said they were husband and wife, but while they were there at that time, they were not married, they were sleeping together (interpreter says—the way she is speaking it, that means husband and wife); I did not mean to have a whole lot to say, just want to state the facts (interpreter)—just what she knows about it, that is what she is here for.

Q. When you made that statement do you mean to say they were living there at your house as husband and wife?

154 By Mr. Bolen: Objected to, that is purely a conclusion.

By Mr. Wimbish: That is what she said, our interpreter said—she said; they were living there as husband and wife.

By Mr. Bolen: Move to strike out the statement she made a while ago.

By the Court: I will strike out that statement.

By Mr. Wimbish: We except.

Q. When you made that statement do you mean to say they were living there at your house as husband and wife?

A. That is all she knows about it, she stated husband and wife, that was her statement, while they were living with her, don't know anything else to state except the facts about it.

By Mr. Wimbish: I can't hear you.

A. She has stated the facts about what she knows.

Q. Do you know how they were considered in that community as to being husband and wife by the neighbors?

A. She did not exactly answer the question, but she said she had stated the facts about what she knows and don't know anything else.

Q. Tell her to answer that question; she can answer that question as to how the neighbors regarded Charles and Louisa, whether as husband and wife?

A. It is a fact, they said that about them, for my part I did not get anywhere and they were living there with her as husband and wife.

Q. Did they have any children?

A. Did not have any children at that time.

155 Q. Did Louisa have a child after that?

A. She had that child after she left from her place, the place called the Yellow Springs.

Q. Had a child?

A. That is where the child was born at Yellow Springs, that woman you speaking about; carried her over to Yellow Springs, that is where she had the child.

Q. How long after she left your home—that she had the child?

A. She don't know how long it was, did not know she had the child, when she see the child it was a good big child.

Q. Whose child was that generally understood to be in that community?

By Mr. Bolen: We want to object to that as being incompetent, irrelevant and immaterial, you cannot prove the reputation—who

is the father and mother of the child—you can prove they were recognized and held out by the society that they were their children—you can prove they are the issue of certain two people.

By the Court: I think in the issues in this case it is relevant, objection overruled.

By Mr. Bolen: Defendants except.

A. She said—it was known as Charles Puller's child, that is what was told to her.

Q. How long did these people live together there at your house, Charles and Louisa?

A. About a year.

Q. Who provided for Louisa and furnished her something to eat and wear during that time?

A. I did, provided for something to eat while they were there.

156 Q. Who paid for it?

A. I paid for it, I went the expenses.

Q. Ask her if Charles did not provide something?

By Mr. Bolen: Objected to as leading and question been answered twice.

By the Court: Objection sustained.

Q. You remember of talking to Mr. Duncan through an interpreter yesterday about that, to refresh your recollection?

A. That gentleman over there done the interpreting for me.

Q. Zeno?

A. Yes.

Q. Ask her if she don't remember of telling Mr. Duncan yesterday that Charles supported Louisa and bought provisions for her?

A. Yes sir I did say that to Mr. Duncan.

Q. Ask her now if that is true, that Charles supported her?

A. Yes sir, you requested me to tell nothing but the truth about it, and if I tell anything else I would be lying.

Q. Did you know Nicey Cahee?

A. Yes sir, I know her, she is dead.

Q. How far did she live from you at that time?

A. This woman you call Nicey Cahee, she rented me the house we living in when these parties staying with me.

Q. Were your house- right there close together?

A. No sir, Cahee living on one side of the creek and I lived on the other.

Cross-examination.

By Mr. Cutler:

Q. Ask her if she knew Robert Alberson?

A. Yes sir, I knowed him at that time, but he is dead.

157 Q. Ask her how far Robert Alberson lived from her house at the time Louisa James was there?

A. Quite a distance.

Q. Ask her if Robert Alberson used to come there to see Louisa James?

A. I have seen him there several times, but for me to know that he had anything to do with her I do not know it.

Q. Ask her if Louisa ever told her that this child was Robert Alberson's child?

A. No sir.

Q. Ask her if she knew where Louisa went and who he stayed with when she went over to Yellow Springs?

A. I do not know sir who she did live with at that time; Hogan Keel know more about it than I do.

Q. Ask her if during the time Louisa lived at her house, if Robert Alberson furnished her with any means of support, in the way of clothing?

A. No sir, not that I know of, don't know whether he had anything to do with her or not.

Q. Ask her how many times he was there during the year that Louisa James stayed at her house?

A. I don't know sir, I did not keep account to notice how many times he came there.

Q. Ask her if he came any more than once?

A. No sir, I did not keep account how many times he came there, I came here to state the facts, I did not have it in my mind, have to come to Court to tell it.

158 Cross-examination.

By Mr. Bolen:

Q. Ask her who came to stay with her first, Charles Puller or Louisa?

A. The woman came to my house first and Charles was over to that woman's, Nicey Cahee's.

Q. How long did Louisa stay at your house before Puller came over there?

A. She was not there very long before he was there.

Q. How long did he stay when he first came, Puller; how long did Puller stay when he first came to see Louisa, stayed two hours or two days or how long did he stay?

A. She did not exactly answer your question when came there; from the time he was there, he was there about a year before he left there.

Q. Stayed there all the time?

A. No sir, he was a laboring man, farming over there, came backwards and forward.

Q. Ask her if he did not stay there on his place most of the time and just came to see Louisa?

A. He was living with his sister and got farm from his sister and working over there, but he comes back over there regular.

Q. Every Saturday night?

A. No sir, I don't remember that, about the Saturday night.

Q. Lots of nights he stayed at his sister's and did not come to see Louisa, wasn't there?

A. He visited there pretty often, not far from where she was, he working over there, but he continued to come over there very often, hardly missed.

Q. But he called his sister's his home; Puller called his sister's his home, didn't he?

A. No sir.

159 Q. Lots of nights he stayed at his sister's and did not come to see Louisa, wasn't there?

A. I said he visited very often over there.

Q. That what she said?

A. Yes sir.

Q. She means over at her house?

A. Yes sir.

Q. When he visited her house, what would he and Louisa do, would they sleep together or not?

A. Yes, sir, they slept together very often, just like any other man and wife, you know how often a man and wife sleep together, and just that long they slept together, and he would have continued to sleep there if had not carried her off.

Q. Try to keep you from knowing they were sleeping together?

A. No sir, did not try to hide from me at all, I took him just the same as my brother and they all slept in my house.

Q. When other people there would they try to hide from them?

A. No sir.

Q. What other women did Puller go to see at that time; what other Indian woman did Puller go to see, Charles Puller, what other Indian woman did Charles Puller go to see at that time?

A. No sir, don't know that.

Q. Don't know?

A. No sir.

By Mr. Wimbish: She did not say no sir, she said no sir, don't know that.

Q. What name was this woman going by when she was staying at your house?

A. Did not know she had any other name only the name she was.

160 Q. What was that; she still went by the name of Louisa James while she was staying at your house?

A. She went by Louisa James just like in old times, she used to do.

Q. Just like she always had?

A. Yes.

Q. Did Charley Puller have any other wife at that time?

A. No sir, not that she knowed of.

Q. You know whether he had any other wife before that?

A. No sir, she did not think he had any other woman outside what he had there; undoubtedly he did not have any one else on account of him sleeping with her during the time he was there.

Q. That is her answer for it. Which came to see Louisa the most Robert Alberson or Charles Puller?

A. I will say that he was with her a while, but he did not stay

there long, after he went away from there, Charles got there, and been there until she went to Yellow Springs.

Q. Which came to see her the most, Alberson or Puller while she was at your house, which came to see her the most.

A. Alberson had gone there once or twice way I understand her.

Q. Way you understand her?

A. I will try my best to give you nothing wrong about what she said; Alberson had quit and when Charley got her she stayed there until some other man came and hired her or otherwise carried her to Yellow Springs and never did *she* her anymore until the child was born.

161 Q. Who was that man that carried her to Yellow Springs?

A. Been a long time, I dis-remember who came and got her, but it is a fact he carried her to Yellow Springs.

Q. Did Robert Alberson stay there with her before Puller took up with her, or stayed with her anywhere else, before Puller got her?

A. I do not know just how long Alberson was there, but he had quit coming there.

Q. Did they sleep together as husband and wife, she and Alberson while Alberson had her?

A. No sir.

Q. Where was she and Alberson staying when Alberson had her, before Puller got her?

A. They did not sleep together, but a few times before Alberson left, and he quit her and then Charles came and got her, until they moved her to Yellow Springs.

(It is now 12:15 noon, and the Court takes a recess until 1:30 P. M. of the same day.

It is now 1:30 P. M., Court convenes as per recess taken; it is agreed the jury are all here; cause proceeds.)

Witness on stand just before noon recalled further cross examination.

By Mr. Bolen:

Q. Where did Charles keep his clothes when he came to see this woman?

A. He did not bring no clothes over there with him, he must have had his clothes over there at his sister's.

162 Q. Did the woman have her clothes there at your house?

A. Yes, sir.

Q. What did Charley ever furnish this woman to live on?

A. I do not know sir, didn't know whether he got her anything, if he did I did not know it; I was requested to testify what I know in the case and I have explained all I know about it, I cannot make it any better than which I have already stated, that is all I know about it; I have stated what I know about it, and if I tell anything else outside what I have already testified—

Q. After Charley carried this woman over to Red Springs did

Charley stay with his sister and still work his land over there; Yellow Springs, that is what I mean?

A. No sir he was not staying there, he was over at his sister's.

Q. Stayed at his sister's all the time?

A. After they carried the woman over to Yellow Springs he went back over to his sister's.

Q. Do you know whether he ever went to see her over at Yellow Springs or not?

A. I do not know sir.

Q. You know whether she ever married or not after that?

A. No sir, I do not know they ever married, after she went over to Yellow Springs he went back to his sister's.

Q. They never did say they were man and wife?

A. He did not say anything to me; he knew I seen these parties sleeping together, Charley Puller and that woman, and so he never did say anything to me.

163 Q. Who was it told you that this boy was supposed to be Charley Puller's child?

A. Himself, Charley Puller himself told me that was his child.

Q. Charley Puller?

A. Yes sir.

Q. Anyone else ever tell you that?

A. I never heard it from anybody else, but he only told me, told him that child was his and to come after him, but he has never come after it.

Q. They told him it was his?

A. Yes sir.

Q. And told him to come after it?

A. Yes.

Q. And he never went after it?

A. No sir.

Q. He never said himself it was his child; he said they said it was his child?

A. He did not say himself, but the mother of the child told Charley that was his child and told him to come and get him, but he never did go after him.

Q. When was that?

A. I could not state the time.

Q. Was the child little?

A. Pretty good sized from the way she stated; nearly half grown, when telling her about it and not long after that the child died and he also died.

Q. Did you ever hear the woman say whose child it was?

By Interpreter: Did she ever hear it?

Q. Yes sir.

A. No sir, I never heard from the woman, but I said I heard from Puller, what the woman told him, and he told me.

164 Q. Puller claimed it was not his child, or did he not, and that is the reason he did not go after it?

A. No sir, he still claimed the child was his, but he never did go after him until he died.

Q. You just said a while ago that Puller did not say it was his child; Puller said the woman claimed it; and ask her which was correct.

By Interpreter: You may not understand me.

A. Puller told her that the mother of the child told Puller it was his child, but he never did go after it.

Q. Did this woman have a husband after this, did she have another man after this?

A. After the child was born.

Q. After Puller quit her?

A. I don't know sir.

By the Court:

Q. Ask her what did Charley Puller say about the child as to whether it was his or not?

A. I don't know sir, I have done said just what I know about it.

(Witness excused.)

165

RENO UNDERWOOD.

Direct examination.

By Mr. Wimbish:

Q. Your name is Reno Underwood?

A. Yes sir.

Q. You know Charley Puller and Louisa James?

A. Yes I know him I know her to.

Q. You know them both?

A. Yes sir.

Q. Did they ever live together?

A. Yes sir.

Q. How?

A. Lived together at old lady's name Nicey Cahee's, close to my house about a quarter of a mile.

Q. How were they regarded in that community as to whether or not they were husband and wife?

A. They lived together.

Q. How were they regarded by the people there in that community?

A. Yes sir, they were recognized as man and wife.

Q. How long did that relation—how long did they lived together there as man and wife?

A. Little over a year.

Q. Do you know when she left that place and went over to Yellow Springs somewhere; do you know about the time, about the occasion of her living there and going over to Yellow Springs?

A. I could not state the facts just about how long; she was in a delicate condition—when she left there and went to Yellow Springs.

Q. Did they people visit you?

A. Yes sir, we visited each other.

166 Q. Visited each other?

A. Yes sir.

Q. Did you know this boy they called John Alberson?

A. Yes sir, I knew him.

Q. Did you ever hear either of these parties state who his father was?

A. Told to me that Charley Puller was the father of the child, all I know about it; heard she and Charley Puller were living together; she was in that shape, in delicate condition when she went to Yellow Springs.

Q. Did Charley Puller and Louisa either, ever tell you who was the father of that child?

A. Yes sir.

Q. Which one or both?

A. The woman told me that after the child was born the only thing she will have is that child; but Charles quit her.

Q. Charles quit her?

A. Yes sir, that is all I know about it.

Q. Had Charles Puller been married before he was living with Louisa?

A. No sir, he was married to another woman, then he quit this woman and got this Louisa.

Q. What was her name?

A. Louina.

Q. Was Louina living or dead when he went to living with Louisa?

A. After.

Q. It was after the death of Louina that he lived with Louisa?

A. Yes sir.

167 Cross-examination.

By Mr. Cutler:

Q. How far did you live from Susana, the witness who just left the stand, at the time this Louisa James lived there?

A. She lived in about a mile from me.

Q. Ask her if Louisa James stayed in your house?

A. They became abroad on Sundays and came to my house.

Q. Then, used to visit you at your house?

A. Yes sir.

Q. Ask her how long she saw Louisa James at Susana's house?

A. I could not state the fact, just how long they did stay there, it is a fact they were there, but not able to explain to you just how long they lived there.

Q. Ask her if she knew Robert Alberson who lived in that community; ask the witness if she knew Robert Alberson who lived near there?

A. No sir, I don't know, but lived a good ways from there.

Q. Ask her if she was acquainted with Robert Alberson?

A. Yes sir, well acquainted with him.

Q. Ask her if Robert Alberson did not tell her that this John Alberson was his child by Louisa James?

A. No sir.

Q. Ask her if she don't know about Robert Alberson taking John Alberson in his home?

A. No, sir, don't know that.

Q. Ask her if it was not generally understood and known in that community that Robert Alberson was the father of John Alberson?

A. No sir, don't know anything about that.

168 Q. Ask her if she don't know now that Louisa James named this child John Alberson after the father Robert Albersin, the father of the child?

A. No sir.

Cross-examination.

By Mr. Bolen:

Q. You know Susana?

A. Yes sir.

Q. You know when Louisa James was living at Susana's?

A. No sir, I don't know anything about that, what ever she stated to you—she must have told you what she knew, for I don't.

Q. How far you live from Susana's?

A. Maybe about a mile or not quite so far.

Q. Ask her if Louisa did not live with Susana for nearly a year before she went to Yellow Springs?

A. No sir, don't know.

Q. Where did Louisa James live before she went to live with Nicey?

A. I don't know sir, when I came to know anything that is where I seen her; when I seen her I seen her at Nicey's.

Q. You never had seen her before until you saw her at Nicey's?

A. No sir, never had seen her until I seen her there.

Q. And where was Charley when you first saw this woman.

By the Court: Where was Charley Puller when you first saw Louisa James?

A. That is where I seen him, at Nicey's.

Q. Where did Charles' sister live; ask her if Charley Puller did not have a sister that lived there close somewhere?

169 A. They claimed that Nicey Cahee was a sister to him, but they were not full sisters, maybe cousins.

Q. How many times did you see Louisa James at Nicey's?

A. I seen her there several times, but I did not keep account how many times I seen her there.

Q. See her there as many as three times?

A. More than three.

Q. As many as five?

A. More than five.

Q. About how many times?

A. I cannot state a fact just how many times I seen her there.

Q. Was it five or three hundred?

A. I do not know sir.

Q. How often did you go over to Nicey's?

A. I visited there pretty often, I been over there pretty often.

Q. Once a month?

A. I know I went over there lots of times, but I never counted it, and she came over there several times.

Q. Don't you know she was living over there at Susana's and did not live over there at all?

A. No sir.

Q. What name did she go by while she was living at Nicey's; Louisa James; if Louisa James went by the name of Louisa James when she lived at Nicey's?

A. All I know is Louisa.

Q. Know no other name?

A. No sir, don't know no other name.

170 Q. You say they used to come to see you, whether Louisa came to see you or not?

A. Yes sir.

Q. Who came with Louisa to see you?

A. Her and Charles Puller.

Q. Anybody else with them?

A. No sir.

Q. Now Charley Puller married Nicey's sister the first time, didn't he? Charley Puller married Morris Cahee's sister, Nicey's husband's sister the first time, didn't he?

A. Married Morris Cahee's sister, that was his first wife.

Q. And they lived at Morris Cahee's?

A. They were there at that place until they separated.

Q. Did Charley and his first wife separate?

A. After the death of Charley's first wife.

Q. I never asked her that, I asked her if Charley and his first wife separated; whether Charley and his first wife separated or not?

A. They separated and she was dead when Charley got that other woman.

Q. Do you know she was dead when this woman went over there living with Nicey's?

A. Yes sir.

Q. Was she dead when they were living together over at Susana's?

A. I don't know about that.

Q. How long had she been dead when you saw her over at Nicey's; I mean by that, how long had Charles' first wife been dead when you saw them over at Nicey's?

A. I don't know how long, been long time.

Q. Been dead long time. Where did she die?

171 A. I don't know.

Q. Don't know where she died?

A. No sir.

Q. You at the burying.

A. No sir.

Q. Know where she was buried?

A. No sir.

Q. You know she is dead now?

A. Yes.

Q. How do you know?

A. Because she was sick; her body was carried over about Stonewall somewhere and I heard she died.

Q. Where was Charley then when you heard she died?

A. Nicey's.

Q. Where was Louisa James when you first heard that Charles' wife was dead; was she at Nicey's?

A. After Louina dead.

Q. No; when you heard that Charles' wife was dead, you say Charley was at Nicey's, now where was Louisa?

A. I cannot recall it; I know he and her living together right there at Nicey Cahee's place; I know the place yet.

Q. You don't remember where Louisa was whether she was at Nicey's or not when you heard Charles' wife was dead? You remember whether she was at Nicey's or not; Louisa, at the time you heard Charles' first wife was dead?

A. She came over there away after the death of this woman when she came to Nicey's.

Q. Who did Charley marry next time?

By Interpreter: You want to know who did Charley marry after this woman separated.

By Mr. Bolen: Yes.

A. Louisa.

172 Q. When he quit Louisa, who did he take up with next?

A. I know the woman, but I forgot her name.

Q. Married Betsey?

A. Yes sir.

Q. They got a lot of children haven't they?

A. Two boys and one girl.

Q. You know Tom Puller?

A. I have not seen him since he was about so high (indicating).

Q. Which is the oldest, Tom Puller or John Alberson?

A. John is the oldest.

Q. How much the oldest?

A. I do not know sir.

Q. Just about the same age ain't they?

A. I don't know.

Q. Who told you that Charley Puller and this woman were ever married; they were not married were they?

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial, calls for legal conclusion; further reason, got two questions in one.

By the Court: Objection sustained as to that form.

Q. Were they ever married. Was Charley and Louisa ever married?

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial, calls for legal conclusions.

By the Court: Objection overruled.

By Mr. Wimbish: Plaintiff excepts.

- A. No sir, don't know whether they married or not, but they were living together.
- 173 Q. There were several other people living there in the same house?
- A. Yes sir, people there.
- Q. Who told you they were husband and wife at that time, at the time they were living there?
- A. Louisa told me herself.
- Q. Louisa told you?
- A. Yes sir.
- Q. What did Charley say about it?
- A. Charley never said nothing to me.
- Q. You ever hear anyone else say they were husband and wife at that time?
- A. My old man and Nicey, they told me that was Charley Puller's wife that was living with him. Now as for myself I did not see that.
- Q. Where is Nicey, she dead or living?
- A. She is dead.
- Q. You any kin to Charley Puller?
- A. No sir.

Redirect examination.

By Mr. Wimbish:

- Q. Reno how far apart did Susana and Nicey live?
- A. Not over 400 yards apart.
- Q. Su-ana lived on Nicey's place did she not?
- A. I don't know for certain whether Nicey's place or not, right across the creek from where she lived, and Nicey on one side.
- (Witness excused.)

174

DANIEL HARRISON.

Direct examination.

By Mr. Wimbish:

- Q. Your name is Daniel Harrison?
- A. Yes sir.
- Q. Mr. Harrison you live up in the Chickasaw country?
- A. Yes.
- Q. How long you lived here?
- A. About fifty-one years.
- Q. You know Charley Puller and Louisa James?
- A. Yes.
- Q. Did you know when they lived down there at either Nicey or Susana's?
- A. Yes.
- Q. Which place were they living?
- A. Nicey Cahee's place.
- Q. Whose place did Susana live on?

A. I think Nicey Cahee's place, she lived right across the Creek from her.

Q. You know what relation there was between Charley Puller and Louisa James?

A. He claimed her for his wife all I know about it.

Q. You know how long they lived together as husband and wife?

A. Year or year and a half, somewhere along there.

Q. Year or year and a half?

A. Yes sir.

Q. Did you know this boy John Alberson?

A. Yes sir.

Q. Do you know who—in those days when the boy was a youngster who claimed to be his father?

A. Charley Puller claimed the boy, always claimed him.

175 Q. Do you know whether or not that boy was born while they were living together or afterwards?

A. Living together. she left Nicey Cahee's and went down about Yellow Springs and the child was born.

Q. And you think they were not yet separated?

A. No sir. She came back up there after the child born.

Q. You say in those days Charley Puller claimed that was his boy, John Alberson?

A. Yes sir.

Q. Did you know Robert Alberson?

A. Yes sir.

Q. You know what part of the Chickasaw or Choctaw Nation Robert Alberson and his children took their allotments?

A. Southeast of Stonewall, two or three miles East of Jesse.

Q. Mr. Harrison do you know where John Alberson's allotment was?

A. His allotment East of here about three or four miles.

Q. That the land in controversy in this case?

A. Yes sir.

Q. In selecting the allotments, the Indian wanting to allot these lands had to get the right of possession did he not?

A. Yes sir.

Q. Who had the right of possession of that property, of that land before it was allotted.

A. I had possession of it, but I swapped land with Charley Puller, he had some land down there at Ahlosa.

Q. Charley Puller had some land down about Ahlosa and you had this land out here and you traded with him?

A. Yes sir.

176 Q. Did he state to you why he wanted this land and who it was for?

A. Said he wanted it for John Alberson.

Q. Say who John Alberson was?

A. Said it was his son.

Q. When you made that trade with Charley Puller was there a plat of the land made?

A. I made the plat and give it to him; I did not give it to him, I gave it to Alberson.

Q. How came you to give that plat to Robert Alberson?

A. Charley Puller told me to give it to him.

Q. For what?

A. To file John Alberson.

Q. John Alberson at that time was living with Robert Alberson and his family?

A. Yes sir.

Q. How long had you know- Charles Puller?

A. Raised together.

Q. Yes sir. About how old would he have been, if he was living?

A. About fifty-two years old.

Q. If he were living?

A. Yes sir.

Q. And you have known him all his life?

A. Yes sir.

Q. How did you know him, were you and he pretty intimate?

A. Yes.

Q. Good friends?

A. Yes sir.

177 Q. Mr. Harrison, did you know Charley Puller's first wife, Louina?

A. Yes sir.

Q. At the time Charles Puller and Louisa James were living together down there as Husband and wife I will get you to state to the jury whether Louina was living or dead?

A. She was dead, I think, at that time.

Q. She was dead you think?

A. Yes sir.

Cross-examination.

By Mr. Cutler:

Q. How long had you known Robert Alberson?

A. Known him always.

Q. Always?

A. Yes sir.

Q. He lived at Yellow Springs did he?

A. North of Yellow Springs.

Q. You know about Robert Alberson living as husband and wife with Louisa James?

A. No sir.

Q. You have talked frequently with Robert Alberson during his life time; friendly with him?

A. Once in a while.

Q. Did Robert Alberson ever state to you that John Alberson was his son?

A. No sir.

Q. You knew Charley Puller all the while, he was about your age and you joked with him?

A. Yes sir.

Q. He ever tell you or give any reason for the name of John Alberson, instead of John Puller?

A. No.

178 Q. You know about the *the* time Charley Puller and Louisa lived together as husband and wife?

A. Yes sir.

Q. You don't know whether Louisa and Alberson ever lived together or not?

A. No sir.

Q. Did you deliver this message that you said that Charley Puller told you to give Robert Alberson in regard to the filing of the land?

A. Yes sir, give him the plat.

Q. You know these other children—these other children of Robert Alberson?

A. Yes sir.

Q. You know about the year John Alberson was born?

A. No I don't exactly know what year it was, been somewhere between twenty-two and twenty-five years ago.

Q. You remember distinctly—you remember about him living with Robert Alberson?

A. That is John Alberson?

Q. Yes, that is John Alberson living with Robert Alberson?

A. Yes.

Q. You ever know of Robert visiting John?

A. He lived with him—John lived with Robert.

Q. Lived there or visited there?

A. During his life time.

Q. John Alberson ever live with Charles Puller?

A. No sir.

179 Cross-examination.

By Mr. Bolen:

Q. Mr. Harrison, you interested in this lawsuit in anyway?

A. No sir.

Q. Not interested in this land at all?

A. No sir, not at all.

Q. You say that these people lived at Nicey's?

A. Yes sir.

Q. When did you first find out they were staying over there at Nicey's; how long had they been there?

A. I don't remember when I first found out, but I was there nearly all the time.

Q. You were there often at Nicey's?

A. Yes sir.

Q. You say Susana's was just across the creek over there?

A. Yes sir.

Q. Didn't this woman stay over there part of the time?

A. Once in a while I think.

Q. Which place you see her at the most?

A. Nicey Cahee's the most.

Q. There the most?

A. Yes.

Q. That is where Charley Puller stayed?

A. Yes sir.

Q. Now you never heard either one of them say where they were living, did you, when you be over there; you never heard either one of them say where they were living whether at Nicey's or Susana'?

A. They lived at Nicey's, stayed there altogether.

Q. You know whether they slept together or not?

A. Yes, they slept together.

Q. See them sleeping together?

A. Yes.

180 Q. What name she go by while she stayed there?

A. Louisa James.

Q. And he went by the name of Charley Puller?

A. Yes sir.

Q. And where did she go from to Nicey's?

A. She went from there to Yellow Springs.

Q. When first went to Nicey's, where come from?

A. Judson Collins'.

Q. Who she been living with at Judson Collins'?

A. Not living with anyone, Collins raised her I think.

Q. She had not been living with Robert Alberson before this?

A. No sir.

Q. You know whether Robert visited her over at Susana's before Puller took up with her?

A. No sir.

Q. Don't know that?

A. No sir.

Q. Her and Puller took up together and stayed at Nicey's?

A. Yes sir.

Q. And how long do you think they stayed at Nicey's?

A. Year or maybe more.

Q. Yes?

A. Yes sir, maybe longer.

Q. You know—you knew Charley Puller's first wife?

A. Yes.

Q. She was a sister to Nicey's husband?

A. Yes sir.

Q. You know where she died?

A. No I don't remember where she died at.

181 Q. Now do you know how long Louisa and Charley had been together before you found out they were staying together?

A. No I don't remember.

Q. Do you know now when you first found them over there at Nicey's, Charley Puller's wife had not yet died?

A. I don't remember whether she dead or not, they were separated quite a while before she died.

Q. About how long do you think they were separated?

A. I don't know.

Q. How long did they lived together, Charley and his first wife?

A. I guess lived together maybe two or three years.

Q. Two or three years?

A. I think so, yes.

Q. After they separated how long was it until Charley got him another woman?

A. After they separated Charles, he went down to Nicey Caher's and lived there.

Q. Went to Nicey's and went to living there?

A. Yes.

Q. And how long after he got to Nicey's until this woman came over there?

A. I don't know.

Q. What is your best recollection?

A. Not very long I don't think.

Q. Month or so?

A. Yes.

Q. Mr. Harrison tell the jury according to your best recollection was it from the time Charley separated from his first wife until his first wife died?

A. I don't remember, I could not state how long it was.

182 Q. Two or three years wasn't it?

A. I expect it was.

Q. Two or three years?

A. Yes sir.

Q. Now what woman was Charley living with when his first wife died?

A. I don't remember.

Q. He had already quit this Louisa?

A. Yes sir.

Q. He had quit her; and who was living with Louisa then, who else took her?

A. I don't remember of anyone taking her then, she left, I think she went to Yellow Springs and lived there a while.

Q. Did Louis- have any husband after her and Puller lived over there at Nicey's together?

A. No sir.

(Witness excused.)

183 MANUEL JOHNSON.

Direct examination.

By Mr. Wimbish:

Q. State your name?

A. Manuel Johnson.

Q. How old are you?

A. Going on sixty-four.

Q. How long you lived in the Chickasaw and Choctaw country?

A. All my days.

- Q. You know Charley Puller and Louisa James?
A. Yes sir.
Q. You know when they lived down there in the neighborhood or at the place of Nicey Cahee's?
A. Yes sir.
Q. About how long ago has that been Manuel?
A. I could not tell you; been good while.
Q. Twenty or twenty-five years ago?
A. Yes, more to-
Q. When they were living there, what was their relation as to being man and wife?
A. They were called man and wife.
Q. They were called man and wife there in the community?
A. Yes sir.
Q. Did you know Charley Puller's first wife, Louisa?
A. Yes.
Q. At the time Louisa and Charley were living together was Louisa living or dead?
A. Dead I think.
Q. You ever hear Charles Puller talk about Louisa and refer to her—you understand what I mean—ever hear of him speak of her.
A. What way?
184 Q. Any-way, speak of her?
A. Used to say that was his wife.
Q. Speak of her as his wife?
A. Yes.
Q. Who else's they stay at?
A. Morris Cahee's.
Q. Was Nicey Cahee wife of Morris, was she Morris' wife?
A. Yes sir.

Cross-examination.

By Mr. Cutler:

- Q. How long did Charley Puller live at Cahee's place?
A. Not so very long, but how long, I could not tell you.
Q. Was it a year?
A. No I don't hardly think it was. I am not certain, but I don't think it was a year though.
Q. You there at that place frequently?
A. Off and on, go around there.
Q. You there at night time?
A. No sir.
Q. Was Louisa James there all during the time he stayed there?
A. Yes she was there.
Q. You know about them staying at any other place?
A. No sir.
Q. You know about the birth of John?
A. No sir.
Q. How often did you talk to Charles Puller about this boy, or rather his wife?

A. I did not talk to him anytime hardly.

185 Q. How would those conversations come about?

A. He told me it was his wife at one time; I just considered that was his wife, because he said that.

Q. He told you that at the Cahee place?

A. Yes.

Q. She there at the time?

A. Yes sir.

Q. Was this in her presence; was she present?

A. No sir.

Q. You know Robert Alberson in his life time?

A. Yes sir.

Q. Ever see Robert over there?

A. No sir.

Q. You ever hear anybody say in that community that Robert Alberson was the father of this child John?

A. No, sir, I never.

Cross-examination.

By Mr. Bolen:

Q. Your name Manuel Johnson?

A. Manuel Johnson.

Q. How far you live from Morris Cahee?

A. I don't really know, somewhere about six or seven or eight miles maybe.

Q. What was you doing for a living?

A. Peddling around.

Q. You were up at Morris Cahee's and you saw Charley Puller there?

A. Yes sir.

Q. And you saw Louisa James there?

A. Yes sir.

Q. Where did Charley carry you off to, to tell you that was his wife?

186 A. Did not carry me off anywhere.

Q. Where was you when he told you that?

A. Out in the yard.

Q. Who else was there?

A. Me and he.

Q. That in the Winter time or Summer?

A. I could not tell you.

Q. Don't know whether cold or hot?

A. Not cold nor not hot I don't think.

Q. Morris Cahee dead at that time?

A. No sir.

Q. He was still living?

A. Yes sir.

Q. Where was he?

A. I don't know where he was.

Q. You know where Susana lived at that time?

A. No sir.

Q. Didn't know she lived over across the creek there about four hundred yards on Nicey's place?

A. I guess she did but I don't remember it.

Q. You had forgot that?

A. She may have lived over there but I forgot it.

Q. You been to that house over across the creek about 400 yards?

A. No, never up there that I know of.

Q. What you doing up at Nicey's?

A. Traveling around from one place to another.

Q. How long had they been living there when you first went up there?

A. I don't know.

Q. The first you knew they were pretending to bed up together was when he told you there in the yard?

187 A. Yes, I don't know that they bedded up together, I don't know but what he said. He said she was his wife.

Q. Indians, they call that bedding up together, man and wife in those days?

A. Yes.

Q. You there once?

A. I saw them two or three times, but never talked to him about that being his wife anymore.

Q. You went there two or three times?

A. Yes sir.

Q. You know Charley Puller's first wife?

A. Yes.

Q. You know how long they had been separated before this James woman and he took up together?

A. Not separated, she died, his first wife.

Q. They had never separated?

A. No sir, the woman had died.

Q. You sure they had not separated?

A. Not as I know of.

Q. Don't you know they had separated and Charley Puller took up with this woman about a month after they separated?

By Mr. Wimbish: Objected to as argumentative and a repetition.

By the Court: Objection sustained.

Q. You tell the Court and jury positively she was dead when he took up with this James woman?

By Mr. Wimbish: Objected to as a repetition.

By the Court: Objection overruled.

By Mr. Wimbish: The plaintiff excepts.

Q. Since you had time to think about it, you say at the times you saw Charley Puller and this woman over there, you think his first wife was dead?

A. I think she was.

188 Q. You are not certain?

A. No I am not certain, but I think she was dead.

Q. Now what became of this woman?

A. Which woman?

Q. Louisa James?

A. I don't know sir.

Q. You don't know of her going over about Yellow Springs?

A. No sir.

Q. Don't know when this boy was born?

A. No sir.

Q. You never did hear Alberson claim the boy?

A. No sir.

Q. You never did hear Puller claim the boy?

A. No sir.

Q. You ever talk to Puller very much after that?

A. No sir.

Q. Never saw him much?

A. No sir.

Q. When did you first find out they wanted you as a witness in this case?

A. When did I find it out?

Q. When did you first find it out?

A. When I got the subpoena.

Q. When was that?

A. I believe last Sunday week ago.

Redirect examination.

By Mr. Duncan:

Q. When Mr. Ford came to see you about what you would testify in this case?

A. No sir, give me a subpoena.

Q. Who did?

189 A. Mr. Ford sent a subpoena to me.

Q. You came in response to that subpoena did you, that is the reason you came here?

A. Yes sir.

Q. Who served you with one, who delivered that subpoena to you?

A. Ned Foreman.

Q. Did he tell you that Mr. Ford said to give it to you?

By Mr. Bolen: Objected to as hearsay.

Q. Did Mr. Ford tell you he had sent you a subpoena?

A. No sir, just sent a subpoena by Ned to me and Ned give it to me.

(Witness excused.)

190

MARY CAVATT.

Gib Clark, interpreter.

Direct examination.

By Mr. Wimbish:

Q. Your name Mary Cavatt?

A. Yes sir.

Q. You know Charles Puller and Louisa James?

A. Yes sir.

Q. Do you know—you acquainted with them when they lived together down on Sheep Creek?

A. No sir, don't know.

Q. Did not know them at that time?

A. No sir.

Q. Did you know the boy that was a son of Louisa, called John Alberson?

A. Yes sir.

Q. You ever have a conversation with Louisa in which she told you who that boy's father was?

A. Yes sir.

Q. Who did she say his father was?

A. Charles Puller.

Cross-examination.

By Mr. Bolen:

Q. Who told you that?

A. Louisa, the baby's mama.

Cross-examination.

By Mr. Cutler:

Q. You say you are well acquainted with Charles Puller and Louisa James?

A. Yes sir.

Q. Ask her if she was acquainted with Robert Alberson?

A. Yes sir.

191 Q. Ask her if she remembers of Robert Alberson coming to see Louisa?

A. No sir, don't know.

Q. Ask her where she had this talk with Louisa about this boy being Charles Puller's boy—at whose place?

A. At Hogan Keel's.

Q. Was that before the child was born or after—ask her if that talk at Hogan Keel's was before the child was born or afterwards.

A. Pretty good size boy.

Q. Ask her what the mother of Louisa James called the boy by name?

A. Did not tell me anything about his name.

Q. Ask her if anyone was present when this conversation took place about this boy being Charles Puller's boy?

A. No sir, wasn't anybody there.

Cross-examination.

By Mr. Bolen:

Q. The boy's name was John Alberson then wasn't it?

A. Yes sir.

Q. You know how it happened to be named John Alberson, when Charley Puller was it- daddy?

A. I don't know sir why.

Q. I will ask you if they were not always disputing down there whether that was Charles' child or Robert Alberson's child?

A. All I have heard them say—when ever said anything concerning the boy, would always say Charles Puller's boy.

Q. You heard about Robert Alberson being with this woman, didn't you?

A. No sir.

Q. Did you know Charley Puller's first wife?

A. No sir.

192 Q. How old are you?

A. Thirty-five.

Q. You — about ten years old then when this woman said that?

A. I don't know how old I was, but I knew the boy was pretty good size when she was telling me about it.

Q. You any kin to Puller?

A. No sir.

Q. Ask her if she ever heard in that conversation if Charley said it was not his child and would not take it and take care of it?

A. No sir, I did not hear her say anything about that.

Q. Wasn't Louisa mad because Charley would not take care of the child, and because Charley would — claim the child and take care of it?

A. No sir, I did not know sir whether she was angry or not.

(Witness excused.)

193

JOSIAH WALTON.

Gib Clark, Interpreter.

Direct examination.

By Mr. Wimbish:

Q. You know Louisa James?

A. Yes sir.

Q. You know her, when she and Charles Puller were said to live together as husband and wife or not?

A. I did not see them when they were living together.

Q. After that, after they were said to have lived together, did she live with an uncle of yours?

A. It is what they called in their way, said dad-y or grand dad-y or something like that, said father or grand dad-y or something like that, the uncle of mine.

Q. You know the boy John Alberson?

A. I saw him when he was small.

Q. You ever hear Louisa say who his father was?

A. She said Charley Puller was the father of the child.

Q. She said Charley Puller was the father of the child?

A. Yes sir.

Cross-examination.

By Mr. Cutler:

- Q. Ask *her* how old the child was when he first saw it?
A. *Sometime* about a year old.
Q. Ask him where she was when he had this conversation with her here about this boy being Charley Puller's boy?
A. Yellow Springs.
Q. Ask him where she was staying with that boy at that time?
A. Barton Alberson's.
Q. Ask *her* if Barton Alberson related to Robert Alberson—kin?
A. Brother.
194 Q. Ask him how many times he saw this boy John Alberson at Robert Alberson's?
A. Only see him once.
Q. Ask *her* if Robert was there at the time?
A. No sir.
Q. Ask him if he knew at that time where Robert Alberson lived in that Yellow Springs community?
A. Lived *now* far from this other Alberson.
Q. Ask him if Charley Puller lived down there at Yellow Springs?
A. No sir.
Q. Ask *her* if Charley Puller was there at Barton Alberson's at the time he had this conversation with this child?
A. No sir, he was not there.
Q. Ask him how did this witness Walton happen to be over there to have this talk with Louisa James?
A. Went to a school, how came me to be over there.

Cross-examination.

By Mr. Bolen:

- Q. Did you know Charley Puller's first wife?
A. Yes sir.
Q. You know where she died?
A. I know the death of her, but I do not know where she died at.
Q. Was she dead at the time you were over at this place talking to Louisa?
A. It was after the death of that woman when I went over there.
Q. It was after the death of Charley Puller's first wife when you went over there and was talking to Louisa?
A. Yes sir.
Q. And the baby was then about a year old?
A. Yes sir, just about a year old at that time.
195 Q. Did you know her when she lived at Hogan Keel's?

By Mr. Wimbish: Who?

By Mr. Bolen: Louisa.

- A. No sir, I did not know her.
Q. You know how long she had been living over at this place before you talked with her?
A. About a month when she went from where he was; after she

came to the place she talked with me, she went away about a month after we had the talk.

Q. How long did she stay at that place where you saw her at?

A. They hired her and she only lived there about a month, and during the time she was there, that is the time we had the talk.

Q. Where did she live before that?

A. I do not know.

Q. You know where she was living when the child was born?

A. No sir.

(Witness excused.)

196 By Mr. Wimbish: Plaintiff rests.

By Mr. Bolen: We desire to make a motion.

(Jury now taken outside the court room during the argument on a point of law in the absence of the jury.)

By Mr. Bolen: Comes now the defendants, Lottie Carney, Tom Pendleton, and demurs to the evidence of the plaintiff for the reason it does not make out a cause of action against the defendants Lottie Carney and Tom Pendleton.

By the Court: Demurrer overruled.

By Mr. Bolen: The defendants Lottie Carney and Tom Pendleton except.

(Jury brought back and it is agreed they are all present and the cause proceeds in the presence of the jury.)

197 SUSANA CONNOHO TUBBY.

Gib Clark, Interpreter.

Recalled—further cross-examination.

By Mr. Bolen:

Q. Did Charley Puller and Louisa James ever live at Nicey's?

A. I have stated that before, don't know what else to say.

Q. Did Charley Puller and Louisa James ever live at Nicey's?

A. No sir, don't know that, don't know whether she did or not.

By Mr. Wimbish: She said she don't know whether she did or not.

By Interpreter: Yes sir.

Q. Did they live over there while you lived in 400 yards of them at Nicey's.

By Interpreter: She won't answer that.

Q. Did Louisa James live at your house or Nicey's house, the year they lived there.

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial, testimony is they lived at both places.

By the Court: Objection overruled.

By Mr. Wimbish: Plaintiff excepts.

A. I stated the facts before, she was living with me.

Q. At that time was Morris Cahee living or dead?

A. No sir, I don't know sir, I forgot about that, whether he was dead or alive.

(Witness excused.)

198

DANIEL HARRISON.

Recalled—further cross-examination.

By Mr. Bolen:

Q. Mr. Harrison, at the time you were talking to Charley Puller and he referred to this boy as his boy, I will ask you to state whether or not it was a fact at that time most Indians claimed children whether they were born in lawful wed-lock or whether they were wood colts; they did not deny them.

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial, not in cross examination of any matter we brought out.

By the Court: I thought he wanted to use him as his witness.

By Mr. Bolen: Cross examination on the point Puller said he was his child, we recalled him for cross examination, we think it is cross examination on that point; you remember Mr. Harrison testified that Puller referred to him as his boy.

By the Court: Objection overruled.

By Mr. Wimbish: Plaintiff excepts.

By Mr. Wimbish: The testimony calls for custom among the Indians and he has not shown the witness is qualified on that issue.

By the Court: Objection sustained.

By Mr. Bolen: Defendants except.

(Witness excused.)

199

Defendants' Evidence.

Defendants Alberson Heirs' Evidence.

ROBERT IMMOTOCHEE.

Gib Clark, Interpreter.

Direct examination.

By Mr. Cutler:

Q. What is your name?

A. Robert Immotochee.

Q. Where do you live?

A. Not far from Jesse.

Q. Ask him where—how old he is?

A. Forty-six.

Q. Where do you live from Yellow Springs.

A. About three miles from where I go to the Yellow Springs.

Q. Where you live now?

A. Yes sir, living there now.

Q. What was his answer, didn't he say three miles from Jesse to Yellow Springs?

A. I lived right at Yellow Springs, but about three miles from Jesse over to Yellow Springs.

Q. You know Robert Alberson during his life time?

A. Yes sir.

Q. You know John Alberson during his life time?

A. Yes sir.

Q. Did you know Robert Alberson's wives?

A. Yes sir.

Q. What was her name?

A. First one he called Louisa.

200 Q. Where did they live together?

A. When first commenced talking together, they were right at my house, but I never seen them sleeping together.

Q. Robert ever tell you whose child John was?

A. She had disappeared from where he was, at his place, and when she came back she had that little boy with her.

Q. You know about Robert Alberson and Louisa living together as man and wife?

A. I don't know sir, don't know about that.

Q. Did Robert Alberson at any time state to you that John was his child?

A. Did not say anything to me, but this woman told this Alberson's mother—told his mother from time to time that this child was Alberson's child.

By Mr. Wimbish: Objected to, too remote.

Q. Never did tell you?

A. Never did tell me.

Q. Who did the boy live with?

A. While the boy's mam-y living, living at Sampson Sealy's.

Q. You know about Robert living with her?

A. No sir, I don't.

Cross-examination.

By Mr. Bolen:

Q. Who was it talked was the dad-y of this child—what was the general talk down there whose child this was?

A. I did hear them at times say that the boy was Alberson's boy.

Q. State whether or not it was generally understood that it was a wood's cold and did not know whose boy it was?

A. I do not know that, but might have been that way.

201 Q. You ever hear of this woman being married to Charley Puller or Alberson either; I want to know if you ever heard of this woman being married to Charley Puller or Alberson either, or both of them?

A. No sir, I never heard it.

Q. You know her all the time—about the time this child was

born—you know the woman about the time and during the time the child was born and before that?

By Interpreter: Too much English for me to interpret.

A. It was 1880 something, when he heard the child was born.

Q. How long had he known her when the child was born?

A. I could not tell the facts just exactly, how long I known her before the child was born, but maybe four or five or six years before the child was born?

Q. And you did not know she had any husband at all at the time the child was born?

A. When I first knew anything, or heard of her, she was with this Alberson, but never seen them sleep together or anything of that; that is what I heard of before the child was born.

Q. And that was the only husband he heard of?

A. Yes sir, only thing I heard of.

(Witness excused.)

202

Mrs. AGNES SAMPSON FULSOM.

Gib Clark, Interpreter.

Direct examination.

By Mr. Cutler:

Q. What is your name?

A. Agnes Fulsom.

Q. You know John Alberson during his life time?

A. Yes sir.

Q. Did he live in the same community—same neighborhood you did?

A. Yes sir, lived in the same neighborhood.

Q. He used to come to your house?

A. Yes sir.

Q. You know Robert Alberson?

A. Yes sir.

Q. Could you tell the jury what was generally understood who his father was in that community where they lived together?

A. Do not know whether they were living together or not.

Q. What did the neighbors there say as to who this boy was, who his father was if they said anything?

A. I heard that Alberson was the father of the child.

Q. Ever hear anybody talking about it in that community; she ever hear anybody else talking about it there?

A. Yes sir.

Q. Wel- what did they say?

A. All I heard, that boy was Alberson's boy.

Cross-examination.

By Mr. Bolen:

Q. You know whether she and Alberson ever lived together or not?

203 A. No sir, did not know they were living together.
Q. I will ask you if there was not some question about whose boy it was; did not know whether it was Charley Puller's or Alberson's?

A. The mother of the child told me that Alberson was the father of that child.

Q. Louisa James never was married was she to anybody?

A. No sir, don't know whether she ever was married.

Q. Ask her if it was not generally considered that this child had an uncertain father; if it was not generally talked that this child had an uncertain father, uncertain who its father was?

A. I have not heard anybody else say it; all I have explained it, and heard it from the boy's mother.

Cross-examination.

By Mr. Wimbish:

Q. You don't know whether this woman was ever married or not do you?

A. No sir.

(Witness excused.)

By Mr. Cutler: Defendants Alberson Heirs rest with the exception of some records.

204 *Defendants Lottie Carney and Tom Pendleton's Evidence.*

By Mr. Green: At this time we will introduce in evidence the instruments marked defendant Pendleton's Exhibits 1, 2 and 3.

By Mr. Cutler: Alberson heirs object to that one, being admitted, that is exhibit 2, and object to all of the leases, as being incompetent, irrelevant and immaterial.

By the Court: Objection overruled.

By Mr. Cutler: Defendants Alberson heirs except.

By Mr. Wimbish: The plaintiff objects to them, because they are incompetent, irrelevant and immaterial.

By the Court: Objection overruled.

By Mr. Wimbish: The plaintiff excepts.

205 DEFENDANT PENDLETON'S EXHIBIT No. 1.

STATE OF OKLAHOMA,

County of Pontotoc:

Lease Contract.

This contract made and entered into on this the 15th day of July, 1910, by and between John Alberson of Stonewall, Oklahoma, As the first party and L. M. Chandler of the same place as the second part.

Witnesseth: That for and in consideration of the covenants and agreements herein and after set forth, said covenants and agreements

to be kept by the said — hereto, the party of the First part hereby lets, leases, demises and rents unto the said party of the second part, for the term of five years, Beginning the 1st day of Jan., 1911, and ending the 31st day — Dec., 1915; the following tract of real estate, to-wit:

Lot No. (2) and the W. $\frac{1}{2}$ of the S. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Sec. 6, and the S. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of Sec. (28), Twp. (3) North, Range (7) East of the Indian Base and Meridian, containing 99 and 95/100 acres.

To have and to hold, the said premises unto the said second party, his heirs and assigns for the said term of five years according to the tenor of this contract, and it is further agreed and understood herein that *is that* the said second party to pay 1st party the sum of (\$25.00) dollars each year the same being due and payable the 1st day of Jan. of each year during the life of this contract also that he the second party is to build a good and substantial two room house, the said house to be 14 by 28 ft. that the said improvement is to be place- on the said land before the expiration of this contract, and that 206 the said house to be placed on some portion of Lot No. (2) in said Sec. and that the situation to be designated by the said first part-, also that the said second party is to keep all fences and improvements on the said place in good repair during the life of this contract and to turn the same back to the said 1st part- at the expiration of this contract in as good a condition as received the ordinary wear and tear excepted;

For the faithful performances we and each of — bind ourselves our heirs, executors and assigns, on this the forementioned date.

JOHN ALBERSON.
L. M. CHANDLER.

STATE OF OKLAHOMA,
County of Pontotoc:

Before me a Notary Public in and for the above named state and County personally appeared the above named parties and acknowledged the same for the uses, purpose- and considerations mentioned therein and signed their names in my presence.

[SEAL.]

J. D. CRAWFORD, *Notary.*

Com. Expires July 5th, 1911.

Endorsed: Lease. Contract between John Alberson and L. M. Chandler. 5/298. Filed for Record July 23, 1910, 8 A. —. C. C. Hargis, L. M. Chandler, Stonewall.

207 Attached thereto:

Certificate of Record.

STATE OF OKLAHOMA,
Pontotoc County, ss:

I, C. C. Hargis, Register of Deeds of Pontotoc County, Oklahoma, do hereby certify that the instrument hereto attached was filed for

record in my office at Ada, in the County and State aforesaid, on the 23 day of July, A. D. 1910, at 8 o'clock A. M. and duly recorded in Misc. Record Vol. 5 at page 298.

Witness my hand and seal of office at Ada, Pontotoc County, Oklahoma, this the 25 day of July, A. D. 1910.

[SEAL.]

C. C. HARGIS,
Register of Deeds,
By D. W. SWAFFAR, *Deputy.*

208

DEFENDANT PENDLETON'S EXHIBIT No. 2.

Lease.

This Indenture, Made this 18th day of January, A. D. 1911, between John Alberson, party of the first part, and T. A. Pendleton, party of the second part

Witnesseth, That the party of the first part, in consideration of the covenants of the party of the second part, hereinafter set forth, do by these presents, lease to party of the second part, the following described property, to-wit: The N. E. $\frac{1}{4}$ and the N. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Sec. Six (6) to. Three (3) North, and Range Seven (7) East, containing in all 170 acres more or less as the case may be, according to the Government Plat and survey thereof, This being 60 acres Surplus and 110 acres Homestead, belonging to the aforesaid John Alberson.

In the County of Pontotoc and State of Oklahoma.

To have and to hold the same, to the party of the second party, from the first day of January, 1912, to the first day of January, 1913.

And the party of the second part, in consideration of the leasing the premises as above set forth, covenants and agrees with the party of the first part to pay the party of the first part, at Ada as rent for the same the sum of Sixty and no/100 dollars, payable as follows, to-wit:

Thirty and no/100 \$30.00 dollars in hand paid, the receipt of which is hereby acknowledged, and thirty and no/100 \$30.00 dollars to be paid Jan. the first, 1912.

209 And the party of the second part, Covenants with the party of the first part, that at the expiration of the term of this lease he will yield up the premises to the party of the first part, without further notice, in as good condition as when the same were entered upon by the party of the second part, loss by fire or inevitable accident and ordinary wear excepted.

And it is further expressly agreed by the parties hereto, that if default shall be made in the payment of the rent above reserved, or any part thereof, or any of the covenants or agreements herein contained to be kept by the part- of the second part, it shall be lawful for the party of the first part or his legal representatives, to re-enter into and upon said premises or any part thereof, either with or without process of law, and repossess the same at the election of the party of the first part, and to distrain for any rent that may be due thereon upon any property belonging to the party of the second part. And

in order to enforce a forfeiture for non-payment of rent it shall not be necessary to make a demand on the same day the rent shall become due, but a failure to pay the same at the place aforesaid or a demand and a refusal to pay on the same day, or at any time on any subsequent day, shall be sufficient; and after such default shall be made, the party of the second part and all persons in possession under him shall be deemed guilty of a forcible detainer of said premises under the statute.

And it is further agreed by said lessee that he will not, by or under this lease, or through the possession of said lease ever claim
210 or contest the rights of the lessor John Alberson.

The covenants herein shall extend to and be binding upon the heirs, executors and administrators of the parties to this Lease. Witness the Hands and Seals of parties aforesaid, the day and year first above written.

JOHN ALBERSON. [SEAL.]

T. A. PENDLETON. [SEAL.]

STATE OF OKLAHOMA,

Pontotoc County, ss:

Before me, William H. Nettles, a Notary Public, in and for said County and State on this 18th day of January, 1911, personally appeared John Alberson and T. A. Pendleton, to me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and seal of office this day and year above written.
[SEAL.]

WILLIAM H. NETTLES,
Notary Public.

My commission expires Sept. the 14th, 1912.

Endorsed: Def'ts Pendleton's Ex. 2. Lease from ——— to
————.

STATE OF OKLAHOMA,

Pontotoc County, ss:

Filed this 18th day of Jan., 1911, at 3 o'clock P. M., and registered in No. 5, Misc. Record at page 675.

C. C. HARGIS,
Register of Deeds,
By D. W. SWAFFAR, Dep-ty.

211 DEFENDANT PENDLETON'S EXHIBIT No. 3.

Lease.

This indenture Made this 21st day of September 1910 A. D. 190 between L. M. Chandler party of the first part, and T. A. Pendleton party of the second part witnesseth, That the party of the first part,

in consideration of the covenants of the party of the second part, hereinafter set forth, does by these presents, lease to the party of the second part, the following described property, to-wit, Lot two (2) and W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Section six (6) Township three (3) North, Range Seven (7) East, I. M. containing sixty (60) acres more or less from January 1st, 1912, to December w1st, 1916 in the county of Pontotoc and State of Oklahoma. To have and to hold the same to the party of the second part, from the 1st day of January 1912 to the 31st day of December 1916.

And the party of the second part, in consideration, of the leasing the premises as above set forth, covenants and agrees with the party of the first part to pay the party of the first part, at and as rent for the same the sum of \$275.00 (for entire term) Dollars, payable as follows, to-wit: January 1—1912—secured by chattel mortgage on the following described property to-wit:—1 pony—2 cows—4 yearling heifers; 1 sow & 5 shoats; this day executed by said T. A. Pendleton to said L. M. Chandler,—and for the further consideration of building—one 2 room box house on said premises, 14x28 feet.

212 And the party of the second part, Covenants with the party of the first part that at the expiration of the term of this lease he will yield up the premises to the party of the first part, without further notice, in as good condition as when the same were entered upon by the party of the second part, loss by fire or inevitable accident and ordinary wear excepted.

And it is further expressly agreed by the parties hereto, that if default shall be made in the payment of the rent above reserved, or any part thereof, or any of the covenants or agreements herein contained to be kept by the party of the second part, it shall be lawful for the party of the first part or his legal representatives, to re-enter into and upon said premises, or any part thereof, either with or without process of law, and re-possess the same at the election of the party of the first part, and to distrain for any rent that may be due thereon upon any property belonging to the party of the second part. And in order to enforce a forfeiture for non-payment of rent it shall not be necessary to make a demand on the same day the rent shall become due, but a failure to pay the same at the place aforesaid, or a demand and a refusal to pay on the same day, or at any time on any subsequent day, shall be sufficient; and after such default shall be made, the party of the second part and all persons in possession under them shall be deemed guilty of a forcible detainer of said premises under the statute.

And it is further agreed by said lessee that he will not, by or under this lease, or through the possession of said lands—
213 ever claim or contest the rights of the lessor.

The covenants herein shall extend to and be binding upon the heirs, executors and administrators of the parties to this lease. Witness the Hands and Seals of parties aforesaid the day and year first above written.

L. M. CHANDLER. [SEAL.]
T. A. PENDLETON. [SEAL.]

STATE OF OKLAHOMA,
County of Pontotoc, ss:

Before me A. H. Constant a Notary Public in and for said County and State personally appeared L. M. Chandler and T. A. Pendleton to me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

In witness whereof, I have hereunto set my hand and notarial seal this the 21 day of Sept. 1910.

[SEAL.]

A. H. CONSTANT,
Notary Public.

My commission expires 2/28 1912.

Endorsed: Lease from ——— to ———.

STATE OF OKLAHOMA,
Pontotoc County, ss:

Filed this 21 day of Sept. 1910 at 5 o'clock P. M., and Registered in No. 5 Misc. Record at Page 392.

C. C. HARGIS,
Register of Deeds.

214

STEVEN ALEXANDER.

Direct examination.

By Mr. Green:

Q. State your name?

A. Steven Alexander.

Q. Where do you live?

A. Used to live close to old Stonewall, live close to Moller now.

Q. Close to Moller?

A. Yes sir.

Q. About how old are you?

A. About fifty-five years old.

Q. You know Louisa James during her life time?

A. Yes sir.

Q. How old was she when you became acquainted with her?

A. About thirty-five years old.

Q. How old was she?

A. About thirty or thirty-five years old.

Q. Did she live at your house?

A. Yes sir.

Q. How long did she live there?

A. Two years.

Q. During the time she lived there who visited her?

A. Who lived with her?

Q. Yes?

A. Robert Alberson lived with her.

Q. Did he visit her?

A. Yes sir.

Q. How often?

A. Sometimes came and stay a week or so and go back home, and then came back again.

215 Q. State whether or not they were married?

A. No sir, they never married.

Q. You know Charles Puller?

A. Yes sir.

Q. You know him at that time?

A. Yes sir.

Q. Ever see him around there?

A. Around there where his sister living.

Q. Who was she?

A. Nicey Carhee.

Q. How often you see him there at Nicey's?

A. He was there one year, made a crop up there one year.

Q. You know Johnnie Alberson?

A. No sir, I don't know Johnnie Alberson, but I saw a boy.

Q. Did Louisa have any children?

A. Yes sir.

Q. What was his name?

A. *Hold* whole lot, but the one that was grown was Johnnie Alberson.

Q. You know that?

A. Yes sir.

Q. State whether or not Louisa was married to Charley Puller?

A. No sir.

Q. Did Louisa have a child when she came to live at your house?

A. No sir.

Q. Where was John born?

A. Down at Nicey Carhee's.

216 Q. How long after she left your house until Johnnie was born?

By Mr. Wimbish: Objected to as leading.

By the Court: Objection overruled.

By Mr. Wimbish: The plaintiff excepts.

Q. How long, Steven, after she left your house until Johnnie was born?

A. About two months.

Cross-examination.

By Mr. Wimbish:

Q. That was about twenty-five years ago, wasn't it Steven?

A. What?

Q. That was about twenty-five years ago, wasn't it?

A. I guess about twenty-eight.

Q. Steven you ever been to the penitentiary?

A. Yes sir.

Q. What for?

By Mr. Green: Objected to as incompetent, irrelevant and immaterial.

By the Court: Objection overruled.

By Mr. Green: Defendants Carney and Pendleton except.

Q. What did you go for?

A. Go for people telling lie.

Q. What was your charged with?

A. Whiskey.

Q. Never did go for stealing cattle?

A. No.

Q. You say she went from your house to Nicey's?

A. Yes sir.

217 Q. And how long did she live at your house?

A. Two years.

Q. There two years?

A. Yes sir.

Q. And she was about thirty-five years old when she came there?

A. About that, I don't know; about.

Q. That was along in 1887, about that time?

A. I don't know.

Q. Been over twenty-five years ago, hasn't it?

A. Yes, about twenty-five years ago.

Q. And at that time she did not have any children?

A. No sir, did not have any children.

Q. And about two weeks after she left your mother's and went to Nicey's Johnnie was born?

A. Yes sir.

Q. And Johnnie was the first child she ever had?

A. Had whole lot of children but all died.

Q. Had many children had she had before Johnnie was born?

A. Have to study to tell you.

Q. Al- right study it out.

A. One fellow by the name of Sam Mue, had a child by him; and another fellow by the name of Hickey Ubby, had a child by him, and one fellow's name Steven Nup Tubby, and had a child by him, and he died, and then had this child.

Q. Ever have any other after that?

A. No sir.

Q. How long had you known her before she went to your house?

A. Four or five years.

218 Q. These children born before you knew her or after you knew her?

A. I don't understand you.

Q. When you first knew her had she had any children then?

A. Yes sir.

Q. How many children had she had when you first knew her?

A. One.

Q. This was the first one you talking about?

A. Yes sir.

Q. You knew a man by the name of A. J. Bristoe, who lives down at Coalgate?

A. No sir.

Q. I will ask you if he did not come to you on behalf of the Alberson heirs in this case, and if you did not tell him——

A. That fellow's name is Threadgill.

Q. I am not talking about Threadgill now, I am talking about Bristoe; I will ask you if he did not come to you on behalf of the Alberson heirs in this case, and if you did not tell him that Robert Alberson and this woman lived together as man and wife at your mother's house?

A. No sir; he told me his name was Threadgill.

Q. I am asking you if you did not tell Bristoe, A. J. Bristoe, on the 2nd day of November, 1912, that Robert Alberson and Louisa James lived together at your mother's house as man and wife, did you make that statement or not?

A. I don't think I did.

Q. Will you tell that jury you did not make that statement to Mr. Bristoe?

A. No sir I never told that; if I am not mistaken this fellow's name was Threadgill.

219 By Mr. Bolen: Objected to, if the statement had been made it could work no detriment in this case, and the plaintiff has no right to attempt to impeach the witness on a fact that could effect him in no way whatever.

By the Court: Objection overruled.

By Mr. Bolen: Defendants Carney except-.

Q. Didn't you further make the statement to Bristoe that this child was born at Hogan Keel's house?

A. No sir.

Q. You sure?

A. I don't know that fellow.

Q. Didn't a man come to your house, whether you knew him or not, on the 2nd day of November?

A. Never came to my house, came to Stonewall.

Q. Didn't he come there and you make the statement to him, Mr. Bristoe or anybody else, that this Robert Alberson and Louisa James lived together at your mother's house as man and wife?

A. No sir.

Q. You did not do it?

A. No sir.

Q. And didn't you further make the statement to him that this child was born at Hogan Keel's house?

A. No sir, I did not tell him that.

Q. Did not tell him that?

A. No sir.

220 Q. Didn't you sign the statement, and didn't you admit to Mr. Cutler, the attorney for the Alberson heirs in the town of Ada, right here in the town of Ada that you did sign it and that it was so?

A. No.

Q. Didn't you admit to that man right there, here in the town of Ada that you had signed that statement and it was so?

A. Yes, I signed my name, but I never told him they were man and wife, that was wrong.

Q. Answer my question. Didn't you tell Mr. Cutler that the statement there was true and that you signed it?

A. Yes I signed it.

Q. Didn't you tell Mr. Cutler here in the town of Ada since this term of Court been in session that that statement was true?

A. Yes.

Q. Is it true or false?

A. It is true.

Q. How came you to tell the other statement if this statement is true, who told you to make that other statement?

A. Nobody.

Q. Didn't Mr. Ford tell you to make that other statement—

A. I might explain—

Q. I want to ask you who told you to make the statement you testified to in direct examination in this case; I will ask you if Mr. Ford didn't do it?

By Mr. Green: Objected to, Bob Ford is not in the case.

By Mr. Wimbish: Bob Ford signed one of the subpoenas as attorney for the defendant Lottie Carney.

By the Court: Objection overruled.

221 By Mr. Bolen: We want the record to show that the attorneys for the plaintiff have been sniggering and laughing over this affidavit in the presence of the jury, and we want to except to it and the Court to instruct the jury to not consider it.

By the Court: Objection overruled.

By Mr. Bolen: Defendant Carney excepts.

A. No sir, he never done it.

Q. Explain to the jury why you testified one thing and you say now this other statement is true; why did you testify to something that was not true?

A. Well, let me tell you; I can't talk english plain enough, I cannot tell you what I want to tell you; get the interpreter for me and I will tell you.

Q. You understood Mr. Green a while ago, didn't you?

By Mr. Green: I think if he calls for the interpreter he should have one.

Q. Don't you understand english, haven't you understood everything been asked you?

A. I understand a little, but now I going to ask you a thing; this way, this different all to me; I cannot tell what you trying now, all tangled up to me; which, Alberson, Puller, Lottie Carney or what.

Q. Well, why did you say on your direct examination that Robert Alberson and Louisa James never lived together as man and wife, when you say now they did live together as man and wife?

222 A. I think that man that put it down there made a mistake, I told him they never did live together.

Q. Steven, I will ask you this question; didn't Mr. Cutler, the attorney for the Alberson heirs read this statement over to you Monday in the town of Ada, about eleven o'clock, and didn't you tell Mr. Cutler that this was your signature, that you signed it, and the statements in there were true, and didn't you state to the jury just a while ago that they were true?

A. I thought he said wanted and claimed that child.

Q. I am talking about this statement now?

A. That is what he asked me about, about that child, that is the truth what I said.

Q. Didn't Mr. Cutler read this over to you?

A. Never read it, showed it to me.

Q. Didn't he read it to you?

A. Showed it to me and said that is your hand writing.

Q. In the presence of Sampson Fulsom here, and didn't you tell him it was so?

A. A child dead, what I understood, I am telling you the truth, that is what I understand, the child dead.

Q. Now Steven, how many other children did Robert Alberson have?

A. He got three living.

Q. Who are they?

A. Sitting back here I guess.

223 Q. How old is the oldest one of them?

A. I don't know.

Q. How long have you known him?

A. Robert Alberson.

Q. Yes?

A. Pretty near raised together.

Q. You know Charley Puller?

A. Yes sir, I know him.

Q. How long you known Charley Puller?

A. Pretty good while.

Q. You know Charley Puller when he lived over at Nicey's.

A. Yes sir.

Q. How far you live from there?

A. About a quarter of a mile.

Q. Anybody live there with Charley?

A. No sir.

Q. Didn't Louisa live there with Charley?

A. No sir, not as I know of, because Louisa stayed over at my house.

Q. Didn't Louisa live at Susan's?

A. No sir.

Q. You know that.

Q. Did she and Charles Puller ever live together?

A. Louisa?

Q. Yes?

A. No sir, not as I know of.

Q. Never did live together as you know of?

A. No sir.

224 Q. I will ask you if in this same statement if you did not state to that man Bristoe and he reduced it to writing that she lived with Charley Puller?

A. That thing is wrong to me.

Q. Sure wrong; and didn't you state to Mr. Cutler here in the town of Ada, here on last Monday, in the front of the hotel, in the presence of Sampson Fulsom, this statement was true; that he read it over to you?

A. I thought they said they claimed that child.

By Mr. Bolen: Objected to as a repetition, been asked two or three times.

By Mr. Wimbish: Yes I have asked it three times, took two of them to get a correct answer out of him.

By Mr. Bolen: We except to the remark of the counsel.

By the Court: Objection sustained.

By Mr. Wimbish: Plaintiff excepts.

Q. Where was that child born now; what do you say now about where that child was born?

A. I told you at Nicey Carhee's.

Q. Wasn't it born at Hogan Keel's?

A. I don't know as he was born at Hogan Keel's.

Q. You know it was born at Nicey Carhee's?

A. Yes sir.

Q. So if born at Nicey Carhee's it could not be born at Hogan Keel's could it?

By Mr. Bolen: Objected to argumentative.

Cross-examination.

By Mr. Cutler:

225 Q. You made this statement before Mr. Bristoe and Sampson Fulsom at Stonewall you signed here?

A. Yes sir.

Q. You remember that I asked you about this statement, if that was your signature, on Monday?

A. Yes, but I understood.

Q. Wait a minute, answer my question?

By Mr. Green: The attorney for the plaintiff took up the same questions and asked it for the Alberson heirs; now they are taking up another hook by another defendant.

By the Court: Objection overruled.

By Mr. Green: Defendant excepts.

Q. You remember I read you this statement in the presence of Sampson Fulsom?

A. Yes sir.

Q. And I asked you if that was true?

A. Yes.

Q. And what did you say?

A. I said yes, it was true.

Q. I said, that is all I wanted, was the truth, and went away?

A. Yes sir.

Q. Who has talked with you about this case within the last few days?

A. No-body, just like what I told.

Q. Well, answer the question?

A. No-body; now let me ask you again, I thought you asked me about Alberson, that child, you wanted to prove that this was Robert Alberson's boy.

226 Q. You just answer my questions, if you can't answer them say so. You say you have talked to no-body; you have talked to me, that is true about this case?

A. Yes sir.

Q. You talked to Mr. Ford about this case?

A. No sir.

Q. You talked to Mr. Chapman about this case?

A. No sir.

Q. You talked to Mr. Statler about this case?

A. Yes sir, your name is Statler.

Q. It wasn't this morning, you know it was not?

A. No sir.

Q. Say whether you did or not?

A. No sir.

Q. You have not talked with anybody?

A. No sir.

Q. You talked with Mr. Ford?

A. No sir.

Q. On the streets?

A. No sir.

Q. Wasn't you at Mr. Green's office and talked about this case?

A. Yes he asked me about it and I told him about it.

Q. You remember about this case being called in Court yesterday morning?

A. Yes.

Q. You were in the court room and the case went over until afternoon, you remember that?

A. Yes sir.

Q. And isn't it a fact within thirty minutes after that, you were over in the stairway talking with Mr. Ford and some other darkies about this case?

227 A. I don't think I was.

Q. Were you standing there talking to him?

A. Yes talking to him today.

Q. Wasn't you talking about this case?

A. No I don't think I did.

Q. Isn't it a fact Steven when you made this statement, it was before anybody had talked to you about this case, other than A. J. Bristoe and Sampson Fulsom, when you made this statement here?

A. No sir.

Q. That is not true; who did you talk to?

A. Never talked to anybody only Mr. Ford asked me if I knowed any of the kin folks, and I said yes.

Q. Whose kin folks?

A. Lottie Carney's kin folks.

Q. You never talked to them about the rights of the Albersons and Ford did not tell you what to swear here today?

A. Ford never told me that, I am telling the truth.

Q. That the same kind of truth you been telling herein the transaction?

By Mr. Bolen: Objected to?

By the Court: Objection sustained.

228 Redirect examination.

By Mr. Bolen:

Q. You know who Bristoe is?

A. No sir.

Q. You know whether he is any better than Bob Ford?

A. No sir.

Q. He was around hunting the evidence of the Alberson children and came to you and asked you what you knew about it?

A. That fellow told me his name was Threadgill.

Q. Changed his name to Bristoe now?

A. Yes sir.

Q. And you told him what little you knew about it, and he wrote it down here?

A. Yes sir.

Q. And you can't read english?

A. No sir.

Q. And they went to the pains to put in this statement that this child was born before this woman ever had anything to do with Charley Puller, you know they put that in here?

A. No sir.

Q. Did not know they put that in here?

A. No sir.

Q. Now did you ever talk to Mr. Cutler after he read this to you on Monday morning?

A. No sir.

Q. Never have talked to him since?

A. No sir.

Q. And the last word you said to him, that was the truth?

A. Yes.

229 Q. Mr. Cutler did not put you on the stand?

A. No sir.

Q. You know why Mr. Cutler did not put you on the stand?

A. No sir, he never put me on the stand.

Q. You know why he did not?

A. I don't know.

Q. Who is Sampson Fulsom?

A. Sitting up behind them.

Q. He is sitting over here helping them?

A. Yes.

Q. They were trying to get you to swear down there, Puller did not have anything to do with this child?

By Mr. Wimbish: Objected to, statement itself best evidence.

By the Court: Objection overruled.

By Mr. Wimbish: Plaintiff excepts.

Q. They were trying to get you to swear Puller out of Court?

A. Asked me about that child, John Alberson, right to get that land.

Q. And you did swear that Puller took up with this woman; I mean you just signed; you were acquainted with Robert Alberson and Louisa James, and Louisa James for about a year before the birth of her son John Alberson lived in the house with his mother, ——— and Louisa and Robert Alberson both made their home there, and they co-habited there as man and wife, and when Louisa got heavy he asked her who was the father of the child she was going to have, and she said Robert Alberson; before the child
230 was born he left and went to Hogan Keel's, then after the child was born she and Charley Puller took up together; after the death of Louisa James Robert Alberson went and got the child, and Puller made no claim to the child; it had not left an allotment; That substantially true what is in there?

A. Yes sir.

Q. Now is there anything in that statement that that child was born at Hogan Keel's?

A. I never said it, that fellow said it, he said it was born at Hogan Keel's, and I said not it was born at Nicey Cohee's.

Q. You know where Mr. Wimbish got hold of this statement you gave to Mr. Cutler?

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial.

By the Court: Objection sustained.

By Mr. Bolen: Defendant excepts.

By Mr. Wimbish: We admit Mr. Cutler gave it to us.

Q. I never talked to you in my life did I?

A. No sir.

Q. And Bob never told you to swear anything except what was the truth in the case?

A. Yes sir.

(Witness excused.)

231

SAMPSON ALEXANDER.

Direct examination.

By Mr. Green:

Q. State your name?

A. Sampson Alexander.

8—700

- Q. Where do you live?
A. Ten miles North of Stonewall.
Q. How old are you at the present time?
A. I don't know exactly, over fifty years old.
Q. You live in this community and country all your life?
A. Yes sir.
Q. You know Louisa James during her life time?
A. Yes sir.
Q. How old was she when you knew her?
A. I don't know, used to stay around my house.
Q. How large was she?
A. Grown woman.
Q. When you first became acquainted with her?
A. Yes sir.
Q. State who she lived with?
A. She — not live with no certain person; just stayed around one place and another.
Q. State whether or not she lived with you any?
A. Used to come around my house and stay three or four days, maybe a week at a times sometimes.
Q. She have any children at that time?
A. No sir, did not have no children at that time.
Q. Had she had any prior to this, before this?
A. Yes, she had children since then.
Q. I mean before this, before she came to your house?
A. No did not have any children when — came around my house.
232 Q. How long after she left your house did she give birth to a child?

By Mr. Wimbish: Objected to as leading.

- Q. How long after she left your house until child born to her?
A. I don't know exactly how long it was.
Q. Where was she living?
A. She was living right East from old Stonewall at that time.
Q. Who was she living with when she gave birth to the child?
A. I don't know.
Q. You know the child after it was born, after it grew up?
A. Yes sir.
Q. What was its name?
A. John Alberson.
Q. You know Charley Puller?
A. Yes sir.
Q. I will ask you to state whether he ever visited her at your house?
A. No sir, never did.
Q. You know Robert Alberson?
A. Yes sir.
Q. I will ask you to state whether you know whether he visited her while she was at your house?
A. Yes sir, Robert did.

Q. How often?

A. While Louisa was there, Robert used to come around and stayed around three or four days at a time.

Q. And go away?

A. Yes sir.

233 Q. I will ask you if you know whether she was married to Robert?

A. No I don't think *think* was, I never heard her say.

Q. I will ask you if you know whether she was married to Charley Puller?

A. No sir, I don't know.

Q. I will ask you if you heard it talked around in the community whether she was married to either one of them?

A. No sir, never did ask.

Q. I will ask you Sampson, if you know whether she had any bastard children or not?

A. Yes sir, John Alberson.

Q. Commonly known around in the community that he was an illegitimate or bastard child, by everybody?

A. Yes sir.

Cross-examination.

By Mr. Wimbish:

Q. Sampson, at the time she lived with you, were you a married man at that time?

A. Yes sir.

Q. What was your mother's name?

A. My mother.

Q. Yes?

A. Tennessee.

Q. Sealy?

A. Yes sir.

Q. How far you and your mother live apart?

A. Quarter of a mile at that time.

234 Q. How long did Louisa live at your place?

A. Did not stay long, just came around and stayed three or four days, or a week at a time, and go away and came back again.

Q. How long did she live with your mother?

A. I don't know, go around that way sometimes.

Q. Didn't she live at your house a year or two?

A. I don't know whether she did or not.

Q. Was Steven a man of family then?

A. Yes sir, Steven was in there.

Q. Didn't she live at Steven's house a while?

A. I could not say, sometimes I seen her up there.

Q. Didn't she live at Steven's about a year?

A. I don't know whether — did or not, Steven lived about three or four miles from me at that time.

Q. Where did you live from where Nicey Cahee lived?

A. Where did I live from where Nicey Cahee lived?

Q. Yes?

A. I lived about six miles from her.

Q. How far did Steven live from Nicey Cahee?

A. I don't know how far he lived from there, he lived right close to Nicey Cahee at that time.

Q. What time?

A. Steven was living there at that time close to Nicey.

Q. That was the time Louisa was living at Nicey's?

A. Yes sir.

Q. That was the time Charley Puller was living with Louisa at Nicey Cahee's?

A. I suppose.

Q. You heard about it?

A. I heard about it after Charles Puller died, I never heard it before.

235 Q. After who died?

A. Charley Puller.

Q. You ever heard about it until after Charley Puller died?

A. No sir, never heard about it until after Charley Puller died.

Q. John Alberson was the first child Louisa ever had?

A. Yes, that is what they said.

Q. And how old was she at that time?

A. I don't know.

Q. You remember about—been grown three or four years?

A. Yes, grown woman.

Q. Grown woman, been grown three or four years?

A. Yes sir.

Q. How long was it from the time she lived at your house, was it that she lived with Steven?

A. Well, when she left my house I don't know where she went; Don't stay long at one place, go from house to house.

Q. And you don't know how long it was from the time she lived at your house until she lived at Steven's?

A. No sir.

Q. Don't know whether lived at your house first or Steven's?

A. No sir, sometimes lived at my house and sometimes I see her over at Steven's.

Q. Along the same time?

A. About the same year.

Q. About the same year she was at your house, and the same year she was at Steven's?

A. Yes sir.

236 Q. And along about the same time she was at your mother's?

A. I could not say, I don't exactly remember.

Q. Lived at your mother's along about the same time she was living at your house and living at Steven's house?

A. Yes, as near as I can recall.

Q. You knew Charley Puller?

A. Yes sir.

Q. You know his first wife Louina?

A. Yes sir.

Q. When did Louina die?

A. I don't know.

Q. She die before Louisa was ever at your house?

By Mr. Bolen: Objected to as leading.

By the Court: Objection overruled.

By Mr. Bolen: Defendant Carney excepts.

Q. How long had Louina beed dead when Louisa was at your house?

A. I could not tell you.

Q. You knew her?

A. Yes, but I could not tell how long it was.

Q. Louina have a child?

A. No, I never heard of Louina's children.

Q. You know Peter Puller?

A. Yes sir.

Q. Wasn't Peter Puller Louina's child?

A. I heard it.

Q. You heard it?

A. Yes sir.

Q. Peter was about ten years older than John Alberson?

A. I don't know.

Q. Didn't you know Peter Puller?

A. I know Peter Puller, but I don't know his age.

237 Q. If he was living now he would be about thirty-three years old, wouldn't he?

A. I don't know whether he would or not, I could not tell you about that.

Q. Did he have a son named Steven; Charles Puller and Louina?

A. Steven?

Q. Yes sir.

A. I don't know.

Q. You did know Peter?

A. Yes.

Q. Didn't you know Steven?

A. No sir.

Q. You know Tom Puller?

A. Yes sir.

Q. Peter was ten or twelve years older than Tom?

A. I could not tell, I have seen him, but I don't know his age.

Q. Tom is about twenty-three or twenty-four years old now?

A. I don't know, I could not say.

Q. You been to the penitentiary to- haven't you Sampson?

A. Yes sir.

Q. What did you go for?

A. Disposing of mortgaged property.

Q. Just once?

A. Yes sir.

Cross-examination.

By Mr. Cutler:

Q. You know Robert Alberson?

- A. Yes sir.
- Q. What became of John Alberson after Louisa died?
- A. I heard he was dead.
- 238 Q. After Louisa, his mother, died, where did he go?
- A. Louisa?
- Q. John?
- A. I heard he was dead.
- Q. Where did John go after Louisa, his mother, died, and before John died?
- A. Stayed around there on clear Boggy, and I was living there North of Stonewall.
- Q. After she died you know who he stayed with?
- A. No sir.
- Q. You know where Louisa died?
- A. No sir, I don't, after I moved away from that neighborhood I don't know where she died.
- Q. You say your mother's name was Tennessee Seeley?
- A. Yes sir.
- Q. You have a sister named Francis Foreman?
- A. Yes sir.
- Q. Your mother lived with you, when Louisa was staying over there?
- A. Yes sir.
- Q. Louisa stayed with your mother Tennessee Sealey sometimes?
- A. Yes sir, I seen her over there.
- Q. Wasn't it about a year?
- A. I don't know whether a year or not, did not stay one place long.
- Q. You know whether she stayed over there or not?
- A. I could not say whether stayed there a year or not.
- Q. You don't know where this child was born?
- A. No sir.
- 239 Q. You don't know whether Robertson Alberson lived with her or not as Husband and wife?
- A. Not husband, just came around there and stayed at my house together, sometimes.
- Q. Sleep together?
- A. Yes sir.
- Q. Occupied the same bed?
- A. Yes sir.
- Q. Didn't she tell you that Robert Alberson was her husband?
- A. No sir.
- Q. Puller never came there?
- A. Ever- time came around there, they slept together.
- Q. You know how old,—Robert Alberson was at that time?
- A. No sir.
- Q. You know how long ago that was?
- A. No sir.
- Q. You ever see Robert over there to see her at Tennessee Sealey's?

A. No sir.

Redirect examination by Mr. Green:

Q. Sampson, did Robert Alberson contribute anything to the support of Louisa James while she was at your house?

A. No sir.

Q. I will ask you Sampson to state whether or not the reputation of Louisa James was of bad character and that she associated with men of bad reputation in that community; on the question of virtue?

A. Yes, she was of bad character.

(Witness excused.)

240 It is now 5:20 P. M. and the Court takes a recess until tomorrow morning at 9 A. M.

Court convenes at 9 A. M. following day as per recess taken yesterday; jury all present, and cause proceeds.

JILAS HAWKINS.

Gip Clark, Interpreter.

Direct examination.

By Mr. Bolen:

Q. State your name?

A. Jilas Hawkins.

Q. You know Charley Puller?

A. Yes sir.

Q. You know Louisa James?

A. Yes sir.

Q. You know John Alberson, Louisa's boy?

A. Yes sir.

Q. You know Louisa when Johnny was born?

A. No sir, don't know when the child was born.

Q. I never asked him that. Q. How long you know Louisa James?

A. Known her all her youth.

Q. Was she ever married to Charley Puller?

A. No sir, don't know anything about that.

Q. Did you ever hear that they were married?

A. No sir, I did not hear that he had anything to do with this woman until after I got acquainted with him; good, and Charles told me that he had this woman.

241 Q. Was John born then?

A. I am not confident about who is the father of this boy, but after the death of that man, then they begun to tell me that Alberson was the father of that child, and after that I heard it was Charley Puller's boy.

Q. Ask him whether or not, John, when he was a little boy was considered a bastard in that community; child that had no daddy?

A. After the death of this Alberson.

Q. I am asking at the time he was a little boy; at the time he was a little boy, what did the people say around there in the country; or did they say he was a boy with no daddy; that is when the child was little?

A. While this man was living they considered that this Alberson was the father of the child, but after the death of this man they considered the child did not have no daddy.

Q. After the death of which man?

A. After the death of this Alberson; while he was living then I heard the people say it was his child, and after the death of Alberson the people begun to say the child had no daddy.

Q. Didn't they also claim that Samuel was the father of this child when it was little, the fellow by the name of Samuel?

A. No sir, it was away after that when talking about Samuel; Samuel did have something to do with this woman, but that was away after the child was born.

Q. When the child was first born who did they say its daddy was?

A. I have stated to you when the child first born I heard Alberson was the father of the child.

242 Q. Did you hear that at the time or just heard it lately?

By Mr. Wimbish: Objected to, the witness has stated when it was.

By Mr. Bolen: I never have understood it.

By the Court: Objection sustained.

Q. Ask him if he did not tell me down there just a few minutes ago when Gov. Byrd was interpreting, ten minutes ago down there on the street, that they did not know whose child it was, that it had no daddy?

By Mr. Wimbish: Objected to, attempt to impeach the witness.

By the Court: Objection sustained.

By Mr. Bolen: Defendant- Carney and Pendleton except.

Q. Ask him what was this woman's reputation, whether or not she was thick with lots of men, loose woman, that was not virtuous?

By Mr. Wimbish: Objected to, we let them prove that yesterday without objection; but it is not admissible; our Supreme Court has so decided.

By the Court: Objection sustained.

By Mr. Bolen: Defendant- Carney and Pendleton except.

Q. You know whether she had any other children besides John or not?

A. She had one child before, the child was born, but I don't know anything about who was the father of that child.

Q. Was she married to anyone when she had the child?

A. No sir, I cannot state the facts about her being married to anyone, never heard about her being married to anybody at that age of the world.

243 By Mr. Bolen: Object to what he said about that age of the world, move to strike that; never asked him about that.

By the Court: Proceed.

Cross-examination.

By Mr. Wimbish:

Q. You knew John Alberson did you not?

A. Yes sir.

Q. You remember a short time before he became grown he came to your house and asked you where Charles Puller was and told you Charles was his father; you remember about the time John was grown he came to your house looking for Charles Puller and if he did not then tell you that Charles Puller was his father?

By Mr. Bolen: Objected to, he did not know who his father was.

A. Yes sir. After the death of this boy that you are talking about, then this boy came to me and asked me, I asked Charles Puller about it, and then Charles told me that it was his child.

Q. After the death of who?

A. After the death of Robert Alberson.

Redirect examination.

By Mr. Bolen:

Q. How was that, after Robert Alberson died?

A. Yes sir.

Recross-examination.

By Mr. Wimbish:

Q. How far did you live from the Nicey Cahee place?

A. At that time I lived about three miles from her.

244 Q. About three miles?

A. Yes sir.

Redirect examination.

By Mr. Bolen:

Q. What was it John Alberson asked you after Robert Alberson died?

A. He said,—this Alberson was not talking to me, he was talking to my wife—"that he was going to Charley Puller's," he had heard that Charley was his father."

Q. He heard that Charley was his father?

A. Yes sir.

Q. How big was John at that time?

A. Somewhere in the neighborhood of twenty years of age.

Recross-examination.

By Mr. Cutler:

Q. You knew Robert Alberson?

A. Yes sir.

Q. Did you ever talk to Robert Alberson about whose child this was; did you ever talk to Robert Alberson about Johnny; whose child he was?

A. No sir.

Q. How long had you known this woman Louisa James?

A. I never knew she had any other name outside of Louisa James; her father was James, and ever since I knew her from her youth she was called Louisa James.

Q. How old was this child when you first saw him, if you did see him; John Alberson?

A. When became acquainted with him; ten or fifteen years of age.

245 Redirect examination.

By Mr. Bolen:

Q. I will ask you Jilas whether or not Louisa James about the time John Alberson was born and before that, layed up with other men?

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial and too general, and witness not shown to have known her; because his testimony is, he did not know this boy until he was about ten years old.

By the Court: Objection overruled.

By Mr. Wimbish: Plaintiff excepts.

By the Court: You say with other men.

By Mr. Bolen: I will put it with several men.

By the Court: Objection sustained in that form.

Q. Ask him if Louisa James, about the time of the birth of John Alberson, and for a year or two before that, whether or not she had illicit intercourse with a number of men down there that she was not married to, ask him if he knows?

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial, seeking to *proof* reputation.

By the Court: Objection overruled.

By Mr. Wimbish: Plaintiff excepts.

A. I don't know whether she had any dealings with any other men before the child was born, but after the child was born—

By Mr. Wimbish: We object to what took place after the child was born.

246 Q. She had a baby before John was born, didn't she?

By Mr. Wimbish: Objected to as a repetition.

By the Court: Objection sustained.

Q. You ever see her sleeping with a man before John was born?

A. No sir, I did not see it.

Recross-examination.

By Mr. Wimbish:

Q. In those days it was the custom of the Indians when they wanted to marry to agree to take one another as man and wife and go ahead and live together, was it not.

By Mr. Bolen: Objected to, not rebuttal evidence.

By the Court: Objection sustained.

By Mr. Wimbish: Plaintiff excepts.

(Witness excused.)

247

JOE BLUE.

Direct examination.

By Mr. Bolen:

Q. State your name?

A. Joe Blue.

Q. You raised in the Indian Territory?

A. Yes sir.

Q. You acquainted with Charley Puller in his life time?

A. Yes sir, I was.

Q. With Louisa James?

A. Yes sir.

Q. John Alberson, her boy?

A. No sir, not much acquainted with him.

Q. Knew him when you saw him?

A. Yes sir, I knew him when I saw him.

Q. Do you know how many children Louisa James had?

A. No sir, I don't know.

Q. You know whether she had more than one or not?

A. No sir, I don't know how many child- she had.

Q. You know her along when she was a young woman and later?

A. Yes sir, knew her when she was quite young—she was grown.

Q. Ever associate with her?

A. Yes sir.

Q. Go to dances with her?

A. Yes sir, be to dances with her.

248 Q. Do you know whether she ever went off with men or not and done wrong.

By Mr. Wimbish: Objected to, too indefinite.

By the Court: Objection sustained.

Q. Did you hear when John was born, about her having a child, this John Alberson, did you hear about it?

A. No sir, I did not hear about it at all.

Q. About what age was she when you were going to these dances with her and dancing around?

A. I don't know just exactly what age she was, but she was a woman.

Q. Where did she live at that time?

A. I do not know just exactly where she was living at the *the* time, I would see her about Hogan Keel's, down in there.

Q. What became of her; how long did you associate with her in that way; how many years?

A. I just could not say Judge how long it was, be to dances pretty near—

Q. About how many years was it you saw her and met her and ran with her in that way?

A. Probably might *might* been about four or five years to my best knowledge about it.

Q. During that four or five years do you know whether she acted wrong with men or not?

A. Do I know whether she acting wrong——

Q. With men, yes sir.

249 By Mr. Wimbish: Objected to, too indefinite, time not fixed, to say whether before or after the child was born.

Q. Did she have any child at this time?

A. I did not see her with any.

By Mr. Wimbish: Our objection goes to the question "what was wrong."

By Mr. Bolen: I guess everyone understands that.

By Mr. Wimbish: I don't know.

By the Court: Objection overruled.

By Mr. Wimbish: Plaintiff excepts.

Q. You understand what I mean don't you Joe?

A. Yes sir.

Q. Go ahead and tell?

A. Yes sir, I would see her—I see her go off with men; yes sir, I came right straight up and told you about it.

Q. Go off from where?

A. Off from the dances.

Q. Where would she go?

A. Out in the brush.

Q. How many men?

A. Just take it; go off with one man and came back and another man go after her and she go again, I don't know exactly how many men she would go with at the time.

Q. You saw that at these dances?

A. Yes sir, I seen it.

Q. Ever hear tell of her being married to anybody?

A. No sir.

250 Q. You know—did you say how old John Puller was when you first saw him?

A. No sir.

Q. About how big was he when you first saw him? How big was the child when you first saw it?

A. I did not see her with no child.

Q. How big was John when you first saw him, you remember that?

A. John was a good big boy.

Q. Anybody know who his daddy was?

A. I don't know sir whether they did or not, I did not know.

Q. What did they—what was the general reputation about whose child it was?

A. Did not hear anyone say it.

Q. Had the reputation of being a bastard, or being the child of Louisa and some husband?

A. I did not hear them say.

Cross-examination.

By Mr. Wimbish:

Q. You say you knew Charles Puller?

A. Yes sir.

Q. Known him all your life?

A. Yes sir.

Q. How old are you Joe?

A. Sixty-three.

Q. How much younger was Charles than you are?

A. I don't know how much younger, he was a boy though smaller than I was.

251 Q. You know who his first wife was?

A. His first wife was Louina. I believe that is what they called her, if I mistake not.

Q. How long did he and Louina live together?

A. I don't know exactly how long they lived together.

Q. They have any children?

By Mr. Bolen: We object to all this because it is not proper evidence.

By the Court: Objection overruled.

By Mr. Bolen: The defendants except.

A. I don't know whether he had any children by her or not.

Q. And you don't know how long they lived together?

A. No sir.

Q. When did Louina die?

By Mr. Bolen: Objected to as incompetent, irrelevant and immaterial and not cross examination.

By the Court: Objection overruled.

By Mr. Bolen: Defendants excepts.

Q. When did Louina die?

A. I don't know.

Q. Was Louina dead when you first got acquainted with Louisa?

A. No sir.

Q. How old was Louisa when you first got acquainted with her?

A. She must have been somewhere—from best of my knowledge, about twenty or more, I could not say.

Q. Where was she living?

A. That place I seen her at was at Hogan Keel's.

252 Q. You know where Nicey Cahee lived?

A. Yes.

Q. How far you live from there?

A. I lived on Buck Creek and Nicey lived on Sheep Creek.

Q. We don't know how far that was; you lived about six miles from here?

A. About six miles. Yes sir.

Q. Louisa ever live at Nicey's?

A. They said she did, I did not see her myself.

Q. Was Louina dead then?

A. No sir, she was not dead then.

Q. When did Louina die?

A. I don't know just exactly when Louina die.

Q. How do you know she was not dead when she lived at Nicey's?

By Mr. Bolen: Objected to as argumentative.

By the Court: Objection sustained.

By Mr. Wimbish: Plaintiff excepts.

By Mr. Wimbish: We are asking these questions to test the witness' recollection.

By Mr. Bolen: And I think there are other reasons to-

By Mr. Wimbish: Then there are others, if you want me to tell you.

Q. She ever live at Susana Connohotubby?

A. I don't know her.

Q. You see her here yesterday? How many times you testified in cases for Bob Ford?

A. I testified in a case for him once over here.

Q. How many more times?

A. I have not testified in no case for Mr. Ford only twice.

253 Q. This makes three times?

A. Just twice.

Q. Both land suits?

A. On land suits.

Q. Just testified twice on land suits? How many times you testified for him on other suits?

A. I never have outside—

Q. You say you don't know that woman Susana?

A. You called her name.

Q. Susana Connohotubby. (Zeno calls her name.)

A. Yes sir, I know her.

Q. Louisa ever live there, ever see Louisa there?

A. I did not see her there.

By Mr. Bolen: Objected to, been answered by the witness twice positively.

By the Court: Objection sustained.

By Mr. Wimbish: Plaintiff excepts.

Q. Who was Charley Puller's last wife?

A. Betsey.

Q. How many children had by her?

A. I could not tell you; had children by her, but I could not tell you how many he had.

Q. You say you saw that woman go out from the dances with men, go out in the bushes with men—Louisa?

A. Yes sir.

Q. Did not make any effort to hide it or conceal it?

A. I guess you call it hide—get out and go off and when be there—watching around—don't know what he might do himself.

Q. Who did you ever see her go off with?

A. Jess Perry.

254 Q. Is he dead or living?

A. He is dead.

Q. Who else?

A. Off with another man there again.

Q. Who was he?

A. Loman.

Q. Is he dead or living?

A. That is all I can recall of right now.

Q. That is only two. You said sometimes go with two at a time?

By Mr. Bolen: Objected to, he never said that.

Q. I will ask you if you did not on—I will ask you if you did not say on direct examination that she went off with two at one time?

By Mr. Bolen: Objected to, he never said that.

By Mr. Wimbish: Mr. Bolen said he did not say it, now I say the counsel had no right to but in to my question that way. I have not mistreated the gentleman—that be mistreating me by butting in that way.

By Mr. Green: We should have waited for the Court to rule.

By the Court: Objection sustained.

By Mr. Wimbish: Plaintiff excepts.

By Mr. Bolen: We don't object to that last question.

Q. Didn't you state a while ago in your direct examination that you had seen her go off with two men at one time?

A. No sir, I did not say at one time, no sir.

Q. This Jeff Perry a white man or Indian?

A. Indian.

Q. This man Loman?

A. Chickasaw Indian.

255 Q. That the same night or different night?

A. Same night.

Q. And those are the only two you remember?

A. Yes sir, right at the time.

Q. You knew her four or five years?

A. Yes sir.

Q. Did you say you knew her four or five years?

A. Yes sir.

Q. And where did she live during those four or five years?

A. I said she was staying with Hogan Keels when I saw her.

Q. How long she stay with Hogan Keel?

A. I don't know.

Q. Don't know whether she stayed a month or three months?

A. No sir.

Q. You know of her living at any other place than Hogan Keel's?

A. No more than what I heard said.

Q. Where did you ever go with her to dances?

A. Be to dances several places.

Q. Tell me?

A. Jimpson Wonhee's.

Q. Who else?

A. Isaac Perry.

Q. Who else?

A. Other side of Buck Creek, Robert Immotochee, first place.

Q. Where was this dance that these two fellows took her off that night?

A. Jimpson Wonhee's place.

Q. Anybody else at that dance that is living besides you?

A. Yes sir.

256 Q. Who?

A. Simon Corbin.

Q. Is he here?

A. No sir.

Q. Where does he live?

A. Down on Leader.

Q. Anybody else here that was at that dance?

A. My brother Peter was there.

Q. Peter Blue?

A. Yes sir.

Q. He see them go off?

A. I don't know.

Q. Haven't you and he talked it over?

A. No sir, not as I know of.

Q. Who did you first tell about this?

A. Talked it over with several people, talked and laughed about it, I could not tell who was the first man that I ever did tell.

Q. Who did you talk and laugh about it with?

A. I could not say who it was; but see anything, get up and talk about it and laugh.

Q. That has been twenty-five years ago, hasn't it or longer?

A. Been a good while, I could not say exactly how long it was.

Q. That was before she ever had any children?

A. I did not see her with any children.

Q. Did you know her when she lived with Tennessee Sealey?

A. Did I know her?

Q. Yes sir.

A. I never have seen her staying there with them.

Q. Never have seen her staying there?

A. No sir, never have seen her staying there with them.

257 Q. Where do you live now?

A. Staying up here with Daniel Hays.

Q. That is a brother-in-law of Mr. Ford?

A. Yes sir.

Redirect examination.

By Mr. Bolen:

Q. You say you testified in another case, what case was it you testified in for Bob Ford—was it Amos Hays' case?

A. About lost claim property.

Q. One case besides this—one or two cases besides this you testified in?

A. Yes sir.

Q. One or two, if you remember?

A. That was all, I never have testified in any more than three cases I know

Q. You were subpoenaed?

A. No sir, I just knowed and went myself to tell it.

Q. Bob Ford has not told you what to swear in this case, has he?

A. No sir.

Q. Now Mr. Green is the man that got you in this case isn't he, isn't Green the man you first talked to about this case?

A. Talked to him over there in the office.

Q. You don't know whether Bob Ford or Mr. Green got you subpoenaed?

A. No sir.

Q. Now you say that you told people about seeing people going out in the bushes—when did you tell that, at those dances?

258 By Mr. Wimbish: Objected to as leading.

By the Court: Objection sustained.

A. Be off from there.

Q. When was it you first talked about seeing her going in the bushes?

A. Been a long time.

Q. With reference to the time you saw her, soon after that or five years after that?

A. Soon after seeing her.

Q. What did you say about it?

By Mr. Wimbish: Object to what he said about it.

By the Court: Objection sustained.

By Mr. Bolen: Defendants except.

Q. You ever see Peter Blue carry her off- yourself?

A. Seen him talking with her.

Q. You ever seen Calvin Penechee carry her off?

By Mr. Wimbish: Objected to as leading.

By the Court: Objection sustained.

By Mr. Bolen: Defendants except.

Q. Joe had you tried to figure up all you had seen carry her, until you got on the witness-stand?

A. No sir.

(Witness excused.)

259

PETER BLUE.

Direct examination.

By Mr. Bolen:

Q. State your name?

A. Peter Blue.

9—700

- Q. Peter you a Chickasaw negro?
A. Yes sir.
Q. Been raised here?
A. Yes sir.
Q. You know Louisa James in her life time?
A. Yes sir.
Q. How big was she when you first knew her?
A. Grown I guess, young woman.
Q. Have any children at that time?
A. No sir, she did not have any when I first met her.
Q. Where did you first get acquainted with her?
A. Down at Sampson Sealey's.
Q. What was you doing?
A. Cattle running.
Q. State whether or not you with her very much?
A. Yes sir, be to dances with her lots of times.
Q. State whether or not you had lots of dances in those days,
down in that country?
A. Yes, right smart of dances, to be to see her around at dances.
Q. You ever with her?
A. No sir. Ever was with her?
Q. Yes sir, ever sleep with her?
A. No sir, I never slept with her.
Q. Ever carry her off in the bushes?
A. I don't know sir about that.
260 Q. You ever have intercourse with her Peter or not?
A. I could not say anything about like that.
Q. You mean you don't want to tell it. Peter tell us what you
done to her, Peter?
A. No sir.
Q. What did you say Peter?
A. Ever have any dealings with her you say?
Q. You know what I mean don't you?
A. No sir, I don't understand.
Q. Ever have intercourse with her, hug her and lay down with
her?
A. I never did lay down with her.
Q. Did you stand up and do it; ever stand up and do that way?
A. No sir, I know her al- right, but I never done anything like
that with her.
Q. Who did do it?
A. I don't know sir, I never seen anyone do it.
Q. You know what she would do at those dances; you see her do
anything that was suspicious at those dances?
A. No sir, never saw her doing anything at those dances, I seen
her going with men.
Q. Where would she go?
A. Out doors and one place and another.
Q. Where would she go when she get out doors?
A. Go to the brush.

Q. About how long—about how many years you see her at those dances?

A. I don't know how many years.

Q. Estimate it;

A. Seen her several times at the dances, but I could not exactly tell how many years it was.

261 Q. State whether or not she conducted herself that way at about all the dances, or all of them?

A. Mostly at all of them, I seen her around.

Q. Have any particular fellow, or with several fellows?

A. No sir, did not have any particular one, I forgot his name, a fellow they called Alberson.

Q. Went out with Alberson more than the rest?

A. Yes sir, with him most of the time.

Q. Where would they go to?

A. She came there to the dance with him sometimes and go off with him.

Q. I am talking about—did she have any particular fellows to go to the bushes with?

A. No sir.

Q. You remember any of the fellows she went to the bushes with?

A. Let me see, I think she went with Charley Spooler to the bushes, I know, I seen her with Charley Spooler—

Q. Charley Puller or Spooler?

A. I guess that is the name, that is the way we called it.

Q. Went to the bushes with him?

A. Stayed with him a little while.

Q. You ever see her go to the bushes with Charley?

A. No sir, never seen her go to the bushes with him.

Q. Where did she stay with Charley at?

A. Stayed with Charley over there about—at old lady used to call Nicey, I believe, been so long now I might near forgot those people's name, at boy's called Cahee's.

Q. How long stayed over there?

262 A. Used to make that her home.

Q. You see her at the dances while she was staying there?

A. No sir, I did not see her at the dances while she was staying there.

Q. What name she go by when she was staying over there?

A. We only called her Louisa, what I always called her.

Q. Louisa James?

A. Just called her Louisa.

Q. You know whether she ever had any other children or not, besides John Alberson?

A. No sir, if she had any I don't know it.

Q. How big was John when you first saw him?

A. Small boy when I first seen him.

Q. About how big?

A. Somewhere about two years old, I reckon, or year old, some such matter.

Q. When she was staying over at Nicey's was that before or after she had been running with Alberson?

A. That was about the time she was running with Robert Alberson.

Q. She was staying at Nicey's when she was running with Robert Alberson to?

A. Yes sir.

Q. You know who John Alberson's father was?

A. No sir I don't.

Q. What did the people say about it generally around there, what was the general talk in the community about who his father was?

A. I never heard them say who his father was.

Q. Never heard it discussed by anybody?

A. No sir.

263 Cross-examination.

By Mr. Wimbish:

Q. Peter, she lived at Nicey's before she lived at Sampson Sealey's didn't she?

A. Yes sir.

Q. You know about how long before?

A. No sir.

Q. At the time she lived at Nicey's you did not see her at these dances?

A. Yes sir, she would go at the dances while she was at Nicey's.

Q. But you never saw her out with any men? While she was living with Nicey?

A. No sir.

Q. That man you called Charley Puller, that what we called Charles?

A. Yes sir.

Q. That was Charley Puller?

A. Yes sir.

Q. You knew Peter Puller?

A. Yes sir.

Q. That was Peter Puller's father, the man you are talking about?

A. Yes sir.

Q. Now Nicey was kin folks of Charley Puller, or do you know or do you not?

A. Yes sir, I know.

Q. She was kin folks of Charley Puller?

A. Yes sir, Nicey was.

Q. And while Louisa was staying at Nicey's, Charley stayed there to?

A. Yes sir, go there back and forth, but this woman stayed over there on this creek called Roda Creek.

264 Q. What woman?

A. First woman, Louina.

Q. Wasn't she dead then?

A. No sir, I don't think she was.

Q. You knew Louina?

A. Yes sir.

Q. You were acquainted with Louina?

A. Yes sir.

Q. Charley and Louina separated three or four times?

A. Yes sir.

Q. Separated and stayed apart a month or so, and then go back together?

A. Yes.

Q. And finally Louina died?

A. Yes.

Q. And after she died didn't Charley go home and make a crop over on Nicey's place?

A. I guess he did, if he did I don't know it.

Q. After Louina died, didn't Charley go over there and live with them?

A. Might have, after Louina died I seen him there at an old lady called Unica.

Q. That Susana?

A. No sir, she is dead, that was Charles' aunt I think.

Q. How far she live from Nicey?

A. Eight or nine miles, further off from that; I won't say he did not go there.

265 Cross-examination.

By Mr. Cutler:

Q. How long did you know Robert Alberson?

A. Known Robert Alberson, I don't know exactly, how long I had been knowing him.

Q. How old was Robert Alberson when you first became acquainted with him?

A. Young man.

Q. Young man?

A. Yes sir.

Q. Where was Robert Alberson living at that time?

A. Just living from one place to another, when I got acquainted with him.

Q. Wasn't he staying with his father at that time?

A. I don't know his father.

Q. How long did you know Robert Alberson before you knew Louisa?

A. Known him about a year, such a matter, seen him a time or two.

Q. How long did you know this Charley Puller before you knew Louisa?

A. I could not exactly tell you, me and Charley and all might near grew up together.

Q. How long was it before you knew this child was born?

A. That child was born?

Q. Yes?

A. I don't know.

Q. How old was the child when you first saw him?

A. Good big child when I first saw him; I don't know how old he was.

Q. How long was it before you saw this child before you saw Louisa?

266 A. I could not tell how long.

Q. About?

A. Pretty good while.

Q. Then it was four or five years or longer when you went to dances with her, when you saw this child?

A. Yes sir, must have been, I could not tell exactly how long it was.

Q. You ever see this child with Robert Alberson?

A. No sir, never have seen him with Robert Alberson at all.

Q. I don't remember where you stated you first saw the child?

A. No sir, I could not tell where I did first see the child at; actually, I couldn't.

Q. Then, this time you testified about this woman going to the brush was a long time before she started to have any relation with Robert Alberson?

A. No sir, when she was with Robert Alberson, she went to the brush.

Q. Where did it occur, what place?

A. Down on Boggy, old house where old man Nelson Colbert used to live.

Q. You know where Yellow Springs was at that time?

A. Yes.

Q. You knew Robert Alberson stayed at Yellow Springs?

A. Yes sir, he stayed around there.

Q. How far was that from this place on Boggy?

A. I don't know.

Q. Five or six or eight or ten miles?

A. About six miles I reckon.

Q. You ever talk to Robert Alberson or he ever talk to you about this child?

A. No sir.

267 Q. Did you know the child's name?

A. Did not know it then, I did not ask him.

Q. Anybody ever tell you what the name of the child was?

A. No sir, until I heard it called after the child got up go- size.

Q. Was the child present when you heard it called?

A. No sir.

Q. Just some one talking about it?

A. Yes sir.

Q. You never did know what the child's name was?

A. No sir, I never did know what the child's name was until I heard it called.

Q. When you say you saw this woman in the brush you go out and see what she was doing?

A. No sir.

Q. How do you know she went to the brush?

A. I saw her come from the brush; brush there, I guess she went to the brush.

Q. You don't know what she was doing?

A. No sir.

Redirect examination.

By Mr. Bolen:

Q. As you recall it when Louisa was staying at Nicey's this Charley Puller's first wife was living over at another place and he stayed at first one place and then another?

A. Yes sir, said that it was his wife's connection.

Q. Claimed who was his wife's connection?

A. This woman he had.

268 Q. Louisa?

A. Nicey used to go over there about Nicey's.

Q. While Louisa stayed at Nicey's she would go to the dances with Robert Alberson?

A. Yes sir, went to the dances with Robert Alberson, because I seen her with him.

Recross-examination.

By Mr. Wimbish:

Q. How far you live from Nicey's at that time?

A. I don't know how far.

Q. About how far?

A. I don't know how far.

Q. Make a stagger at the distance; where did you live?

A. Other side of Stonewall.

Q. North or South?

A. North of Stonewall about a mile and a half.

Q. That was from old Stonewall or new Stonewall?

A. Old Stonewall.

Q. And about how far is it from old Stonewall to Yellow Springs?

A. I don't know.

Q. And you don't know how far it was over on Sheep Creek to where Nicey lived?

A. Not very far, did not seem very far to me.

Q. Five or six miles?

A. I could not judge it, I am a poor hand on judging miles.

(Witness excused.)

269

JOHN FOSTER.

Gib Clark, Interpreter.

Direct examination.

By Mr. Green:

Q. Your name John Foster?

A. Yes sir.

Q. How old are you John?

A. Sixty.

- Q. You live in this country all your life?
A. Yes sir.
Q. You know Louisa James during her life time?
A. Yes sir.
Q. How old was she when you got acquainted with her?
A. I knowed her from her youth.
Q. You know her father and mother, Dr. James?
A. Yes sir.
Q. How many children did Dr. James leave when he died?
A. Four.
Q. You know Lottie Carney?
A. Yes.
Q. You know whether she is a sister of Louisa James?
A. Yes sir, one mother and father.
Q. Did you know Louisa James after she became grown?
A. Knowed her until she was nearly half grown and she went away from there.
Q. Did you know her when she lived at Nicey Cahee's?
A. Yes sir.
Q. Did you know Charles Puller?
A. Yes sir.
Q. Did you ever see him around there?
A. Charles was a relative to this Nicey, visited there pretty often.
270 Q. At Nicey's?
A. Yes sir.
Q. You know Robert Alberson?
A. Yes sir.
Q. You ever see him around Nicey's?
A. No sir.
Q. Did Louisa have a child born to her while she was living at Nicey's?
A. No sir, I have heard she was there, but I did not know she was not there.
Q. You know John Alberson?
A. Yes sir.
Q. Now do you know whether she was married to Charles Puller or not?
A. No sir.
Q. You know whether was married to Robert Alberson or not?
A. No sir.
Q. Do you know whether she was married to anyone or not?
A. No sir.
Q. Did you ever hear of her being married to anyone?
A. No sir, never heard it.
Q. Did you know John Alberson while he was growing up?
A. Never knowed him until he came to my house; never knowed anything about it.
Q. What was the general reputation in that community as to who the father of Johnny was?

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial, not proper way to prove it.

By the Court: Objection overruled.

By Mr. Wimbish: Plaintiff excepts.

A. Never heard it.

271 Q. Was it believed and talked that he was a bastard child?

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial, not proper way to prove it; further reason he testified he does not know.

By the Court: Objection sustained.

By Mr. Bolen: Defendants except.

Q. State whether or not, if you know, it was reputed that Johnny Alberson was a bastard child.

By Mr. Wimbish: Objected to must be first shown he knows it, he has already stated he never heard it discussed.

By Mr. Bolen: He said he did not know who his father was.

By the Court: Objection overruled.

By Mr. Wimbish: Plaintiff excepts.

A. No sir, I don't know.

Q. Never heard it discussed?

A. No sir.

(Witness excused.)

272

SIMON FRAZIER.

Direct examination.

By Mr. Bolen:

Q. State your name?

A. Simon Frazier.

Q. How old are you Simon?

A. Forty-one.

Q. You know Louisa James in her life time?

A. Yes sir.

Q. How big was she when you first knew her?

A. How big was I.

Q. How big was she?

A. Big woman.

Q. Where did you see her most?

A. Shofers and stamp dances.

Q. Shofers and stamp dances?

A. Yes sir, all the same?

Q. You know whether she ever had intercourse with men she was not married to?

A. Men that she was married to?

Q. That she was not married to, that was not her husband?

A. Yes.

Q. How do you know that?

A. She never was married that I know of.

Q. How do you know she had intercourse with other men?

A. I have seen other men moving around with her, carrying her around at these shofers.

Q. What did you see them doing?

A. That was about all, I seen them doing; in them days they called that man and woman, in them days.

273 Q. What did she do in the bushes?

By Mr. Wimbish: Objected to as leading.

Q. Tell what she done?

A. Go to shofers and dances all night and maybe another one the next day, and go to them.

Q. See her do anything wrong with men?

A. Not personally.

Q. See anything that indicated—State whether you ever saw anything that made you suspicious that she was having intercourse with men, and what it was.

By Mr. Wimbish: Objected to what looks suspicious to Simon, we don't know how keen his nose for suspicions is.

By the Court: Objection sustained.

By Mr. Bolen: Defendant excepts.

Q. I will ask you to state if you ever saw her go from those dances out in the bushes with men?

A. Seen her go to the dances and seen her go off with men from the dances; I don't know where — went to.

Q. Come back?

A. No sie, did not come back that night.

Q. Who was her fellows, you know who they were?

A. Yes, know some of them.

Q. Who are they?

A. When she stayed around where Bond Underwood lived, Eastman Kilcrease stayed around with her then, and left and went to — Cohee's.

Q. Who stayed with her over there?

A. Charley Puller was over there handling cattle and I know his wife he had then was jealous of this woman, and this woman stayed with us, and he be gone week or two weeks at a time,

274 and when he came in, she would flog into him about it.

Q. You say Charley Puller's wife was jealous of her while she was staying at Nicey's?

A. Yes.

Q. Where was Charley Puller's wife making her home?

A. Make her home at old man Connohotubby and our house, and when Charles gone she mostly came to our house.

Q. How often Charles come home and see her?

A. Week or two weeks.

Q. How do you know she was jealous about this James woman?

A. Heard her when she was saying so.

Q. Who was she talking to?

A. Charles.

Q. What did Charles say about it?

A. Denied it, of course you know a man would not own up to it.

Q. You know Jonny Alberson?

A. I did not know him, he was a young fellow, he was born since we quit the shofer business.

Q. You know how long Johnny was born after she left Nicey Cahee's?

A. No sir.

Q. How long did she stay at Nicey's?

A. I don't know, never did stay no very long time.

Q. Lived about—place to place?

A. Yes sir.

275 Cross-examination:

Q. How long you been from the pen Simon?

A. Came from there in 1904, I think.

Q. 1904?

A. Yes sir.

Q. What did you go for?

A. Whiskey.

Q. You go for stealing a hog?

A. Yes, but I did not lose any, I been there the second time and did not lose any either time; last time I told you; you asked me the last time.

Q. You just been twice?

A. Yes sir.

Q. How old are you?

A. Forty-one.

Q. And you were born then in 1872?

A. 1872, May 15th.

Q. How old were you when you were going to these dances and shofers?

A. I don't know exactly how old I was, I started when I was about fifteen and quit about when I was twenty.

Q. Go to them as long as they lasted?

A. Lasted on, but scattered out and I let up.

Q. How old were you when Louisa was living at Nicey's?

A. I don't know.

Q. You don't know what year that was?

A. No sir.

Q. You were fifteen or sixteen years old?

A. I reckon, might have been not that old.

Q. Where did you live in those days?

A. Boggy, two miles Northwest of Frisco where I am living now.

Q. You lived about eight miles from where Nicey lived?

276 A. Eight or nine miles maybe.

Q. You down there pretty frequently?

A. No sir, did not go down in there except when something doing.

Q. How many years did Charles Puller lived at Nicey's?

A. I don't know whether he lived there any year or not, he was running cattle over there for them.

Q. Didn't he live there one year Simon?

A. I don't know.

Q. Morce was dead at that time?

A. No sir, living. Morce alive when he going back and forward there.

Q. What year did he die?

A. I don't know.

Q. You know Susana Connahotubby?

A. Yes sir.

Q. She was living right there across the Creek wasn't she?

A. From Cahee.

Q. Yes?

A. I don't know, I cannot tel- you where Susana was living.

Q. You ever at her house?

A. Not in them days, I would meet Susana at the shofers, and I expect that was about her home in those days, I never knew where her home was, but I would meet her at every shofer.

Q. You say Louisa lived at Nicey's a while?

A. Yes.

Q. How long?

A. I don't know.

Q. Who was her fellow?

A. I don't know that, for they claimed that Charles Puller was her fellow; claimed that.

277 Q. I will ask you Simon if after Louina died, if Charles Puller did not live at Nicey's home for about a year?

A. I don't know whether Charles lived there or not.

Q. And I will ask you this question, if when Louisa lived at Nicey's wasn't Louina then dead?

A. No sir.

Q. You positive of that?

A. No sir, Louina staying at home with me and my folks, that been over twenty-one years ago, my father was living, he has been dead twenty-one years; my father staying there; my father was an Indian and that is how came them to stay there.

Q. Your father been dead twenty-one years?

A. Yes sir.

Q. And Louina died since your father?

A. Yes.

Q. You positive of that?

A. Yes sir.

Q. What year did your father die?

A. 1892, February 21st.

Q. What year did Louina die?

A. I don't know just what year Louina died.

Cross-examination.

By Mr. Cutler:

Q. You know Robert Alberson?

A. Yes sir.

Q. You know him about that time?

A. Yes sir.

Q. You ever see him at these dances?

A. Yes sir, went to his house to a dance many a time.

Q. Where did he live at that time?

A. Across boggy.

278 Q. Lived with his father?

A. I *knew* knew his father.

Q. Who did he live with if you know?

A. Lived with his mother.

Q. Her name was what?

A. Nicey.

Q. Did you know this boy John Alberson?

A. I never knew John; John born since I quit dealing in the shofer business.

Q. You ever see Robert with Louisa?

A. Yes sir.

Q. What time was that?

A. That was after she had quit staying over at these other places.

Q. What other place?

A. Cohee's and Underwoods.

Q. Afterwards?

A. Yes sir, away after.

Q. About how many years?

A. I don't know how many years.

Q. A long time or short time?

A. Good while.

Q. Good while?

A. Yes sir.

Recross-examination.

. By Mr. Wimbish:

Q. You say John was born since you quit the shofers?

A. Yes.

279 Q. Was he born since your father died or before?

A. Must have been born since father died, I don't know John at all.

Redirect examination.

By Mr. Bolen:

Q. You really don't know when John was born?

A. No sir.

Q. He was too little to go to shofers and you did not see him?

A. Yes I guess so.

(Witness excused.)

Gib Clark, Interpreter.

Direct examination.

By Mr. Bolen:

Q. Your name is Nancy Underwood.

A. Yes sir.

Q. You know Louisa James?

A. Yes sir.

Q. She ever live at your house?

A. Yes sir.

Q. When she left your house where did she go?

A. I do not know sir where she went.

Q. What was her condition when she left your house, whether or not she was pregnant or otherwise?

By Mr. Wimbish: Objected to; at this time it is incompetent, irrelevant and immaterial.

By the Court: Objection overruled.

By Mr. Wimbish: Plaintiff excepts.

A. Yes sir, she was very large when she left there.

Q. You know an indian named Nicolous?

A. Yes sir, he was there at my house.

Q. Was he there at the same time Louisa James was there or not?

By Mr. Wimbish: Objected to as leading.

By the Court: Objection overruled.

By Mr. Wimbish: Plaintiff excepts.

A. Yes sir, both of them were there.

Q. How long did they stay there together?

A. It is a fact they were there, but I am not able to explain just how long they were there.

Q. Who did they sleep with when they were there?

A. They were bedding; with Nicolous while they were there.

Q. Who bedded with Nicolous?

A. Louisa.

281 Q. Louisa and Nicolous slept together?

A. Yes sir.

Q. You know Charles Puller at that time?

A. Yes sir, slightly acquainted with him.

Q. Was he married then?

A. I don't know sir, I cannot state the facts, where she went to from that place; she was very large when she left my place.

Q. Do you know where she gave birth to that child?

A. No sir.

Q. You know what child it was she was carrying then, whether John or some other child; whether it was John Alberson or some other child.

By Mr. Wimbish: Objected to as leading.

By the Court: Objection sustained.

By Mr. Bolen: Defendants except.

Q. Where did Nicolous go when she left?

A. I do not know sir where they went to, both of them left from my house.

Q. About how old was Louisa at that time, if you know?

A. Don't know sir.

Q. Had she ever had any children before that, if you know?

A. Don't know.

Q. Did you know Louina, Charley Pulier's wife?

A. I am slightly acquainted with her.

Q. Did you know John Alberson?

A. No sir.

Cross-examination.

By Mr. Wimbish:

Q. How long did they stay at your house?

A. It has been a long time and I cannot state the facts just how long they stayed there.

282 Q. Where did Louisa come from to your house; where had she been living before?

A. I do not know sir.

Q. How far did you live from Nicey Cahee?

A. It was not very far, but I do not know how many miles; what distance it was.

Q. Close was it?

A. It was not far, but I could not state the facts how many miles it was.

Q. See Louisa at your house before she lived at Nicey's or afterwards?

A. I do not know sir, when she left from my house where she went to, whether she lived there or not, I don't know.

Q. How far did you live then from Reno Underwood?

A. I cannot state the facts just how far it was, they lived across boggy and I was on this side.

Q. They lived down on Sheep Creek, didn't they?

A. Yes sir, they lived over on Sheep Creek.

Q. Didn't you live on Sheep Creek, to-, didn't you then?

A. Right on the other side of Stonewall; I lived on this side of Boggy.

Q. Who have you talked to about this case?

A. Haven't talked with anybody about this case; I have got the subpoena to be at Court, is the reason I am here.

Q. Anybody talk to you before you were subpoenaed?

A. No sir.

Q. Anybody at all?

A. No sir.

Q. Didn't John Chapman come down there to talk to you about it?

283 A. He was there, but he was out to subpoena some other witnesses when he came by there.

Q. Didn't he talk to you about this case?

A. He made mention to me they going to have Court, but did not talk to me anything about the case.

Q. Didn't he ask you what you knew about it, and you told him you knew the facts in the case, but you would not tell it unless he would give you a \$100.00?

A. That has been a time before this, he asking me, questioning me, if this child was Puller's and I said I did not know anything about that.

Q. Didn't you in the same conversation tell him you knew the facts in the case, but you would not tell it unless he would give you a \$100.00?

A. No sir, I did not say that, no sir, I have said I did not want to have anything to do with the Court when he asked me that.

Q. Now Mrs. Underwood, didn't Mr. Chapman talk to you here in Ada or try to get you to talk to him about this case in Coffman's Hardware Store on the day of the show, and didn't you tell him you knew the facts in the case and you would not tell it unless he would give you a \$100.00?

A. No sir, I remember this, when he was talking to me I said, I don't want to be evidence in the case; I would not testify or be evidence in the case—they going to pay me \$100.00; did not want to attend no Court.

Cross-examination.

By Mr. Cutler:

Q. Ask her if she knew Robert Alberson?

A. I am slightly acquainted with that man, but know nothing to testify in the case, I could not testify anything else except what I have already testified.

284

Redirect examination.

By Mr. Bolen:

Q. Ask her if Louisa was big when she first came to her house?

A. I did not ask her whether she was in a delicate situation or not when she first came there, but when she left from there she was very large.

By Juror: I didn't understand that, about the \$100.00.

By the Court:

Q. The juror wants her to answer that question again about the conversation that she was asked by Mr. Wimbish about the conversation with Mr. Chapman about the \$100.00.

By Mr. Wimbish:

Q. I will ask you if, here in the town of Ada on the day of the show, if Mr. Chapman wasn't talking to you about this case, and if you did not tell him that you knew the facts about this case, and

if you did not say that you knew the facts, but that you would not testify unless they would give you a \$100.00 before you came here?

A. She said this, You have me under oath to tell the truth and nothing else, and I have stated the facts what I know about it, and I cannot say nothing else.

285 Redirect examination.

By Mr. Bolen:

Q. What did she say about the \$100.00? That she would not come to Court for \$100.00?

A. She would not do it.

Q. Did not want to be bothered with it; nobody offered her a \$100.00 have they?

A. No sir.

Q. Bob Ford has not offered you any \$100.00 or anybody else has not offered her any money to come to Court?

A. No sir, has not spoke to me nothing about that.

(Witness excused.)

286

JOHN FOSTER.

Gib Clark, Interpreter.

Direct examination.

By Mr. Bolen:

Q. State your name?

A. John Foster.

Q. What became of Lottie Carney's other brothers and sisters, the other two you spoke about this morning; ask him if the other two brothers and sisters of Lottie Carney are dead or not; you testified this morning there were four children of Dr. James; Lottie Carney and this James Woman; now I want to know what became of the other two?

A. One of them was a half brother to these three.

Q. Are they dead or living?

A. They are dead.

Q. Did they have any children before they died, either one of them?

A. Never had no child.

Q. And then Lottie Carney is the only sister living of Louisa James?

A. These three that I am calling, they were full brothers and sisters.

Q. Ask him if any of old Dr. James' children are living except Lottie Carney?

A. I do not know sir, she is the only one living that I know of.

Cross-examination.

By Mr. Wimbish:

287 Q. What were those brothers' and sisters' names?

A. Lottie, Louisa, Westley and Cena.

(Witness excused.)

AMOS HAYS.

Direct examination.

By Mr. Green:

Q. Your name is Amos Hays?

A. Yes sir.

Q. Uncle Amos you know Lottie Carney?

A. Yes sir.

Q. And you knew Louisa James during her life time?

A. Yes sir.

Q. You know her father and mother?

A. Knew her father.

Q. State if you know whether there are any other living relatives besides Lottie to that family?

A. Another woman, sister to Lottie, names Louisa.

Q. She is living or dead?

A. Yes.

Q. You know Bob Ford?

A. Yes.

Q. What relation is he to Lottie Carney?

A. Bob related by marriage.

Q. To refresh your memory, I will ask you if Lottie Carney is not his step mother?

A. Step mother, but Martin was father-in-law of Bob.

Q. What I am getting at, what the relation Bob was to Lottie Carney?

A. Step mother.

288 Q. Whose daughter is Bob's wife? To refresh your recollection, isn't Lottie Carney Bob's wife's step mother?

A. Yes sir.

(Witness excused.)

By Mr. Green: At this time we ask to have the depositions opened.

By the Court: It is ordered that the depositions be published by the Clerk.

By Mr. Green: We offer in evidence the depositions.

By Mr. Wimbish: We want to object to the introduction of the depositions, for the reason they have not been filed one day prior to the announcement of ready as required by the Statute.

By the Clerk: They have been in the office, but not marked filed.

By Mr. Wimbish: I never saw them before.

289 By Mr. Green: They were present at the taking.

By the Court: The depositions ought to have been filed when they were received and put in the papers. As I understand, the depositions may be opened by agreement of counsel, both sides can go in and have them opened by the Clerk. The Clerk has no authority to open them except by order of the Court or by agreement of the counsel.

By Mr. Green: The Statute says an objection can only come in the trial except for incompetency.

By the Court: I understand that; the only question is the depositions not having been filed and put in the papers, the question is whether they really are any depositions at all, being in the Clerk's office, they could not make the objection because there was no depositions in the Clerk's office on file; still on the other hand you ought not be precluded from using your depositions because the Clerk failed to file them if they have been in there since May. The depositions ought to have been filed.

By Mr. Bolen: Like to put Mr. Duncan on the stand.

By Mr. Duncan: What for; to show I was present?

By Mr. Bolen: Yes.

By Mr. Duncan: Yes, I was present.

By Mr. Bolen: You have a copy of them.

By Mr. Duncan: I may have.

290 By Mr. Green: Could you give us until afternoon to look up some authorities.

By the Court: Yes sir, if the depositions been here and been in the Clerk's Office I will not deprive a man the right to use them; then on the other *man* the other party would not have an opportunity to use them.

It is now 12 o'clock noon and the Court takes a recess until 1:30 P. M.

Court convenes at 1:30 P. M. Jury all present.

During the following proceedings Jury is taken outside of the Court room.

A. D. TANNER.

Direct examination.

By Mr. Bolen:

Q. State your name?

A. A. D. Tanner.

Q. You the Clerk of the District Court of Pontotoc County?

A. Yes.

Q. How long have these depositions in this case been in your office?

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial.

By the Court: Objection overruled.

By Mr. Wimbish: Plaintiff excepts.

291 A. I really don't know sir, I did not know they were in there at all until I went to look for them this morning; Post mark, however, says——

By Mr. Wimbish: Object to what the Post mark shows.

By the Court: Objection overruled.

By Mr. Wimbish: Plaintiff excepts.

A. Post Mark shows must have been received about the 15th of May.

Q. Post Mark on the envelope contains, "Marked at Ada 15th of May"?

A. Yes sir, received here at Ada.

Q. I will ask you to state if any of the lawyers on either side of the case have called on you for this deposition until today just before noon?

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial.

By the Court: Objection overruled.

By Mr. Wimbish: Plaintiff excepts.

A. Did not, no one has until Mr. Green called for them just before noon.

Cross-examination.

By Mr. Wimbish:

Q. Mr. Tanner, they were not with the files in this case were they?

A. No, sir, I keep the depositions in one particular place among my files in my office together, keep them in the box.

Q. They were not in the box the papers of the case were in?

A. No sir.

292 Q. Never made any entry of their receipt on the appearance docket?

A. No sir.

By Mr. Green: We would like to introduce the envelope in evidence to show the post mark.

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial.

(No ruling.)

A. My daughter evidently received the mail and put it in the box and never called my attention to it.

Q. Your daughter working in the office?

A. Yes, sir, she assisted me.

(Witness excused.)

293

W. C. DUNCAN.

Direct examination.

By Mr. Bolen:

Q. You one of the attorneys in this case in May 1913?

A. I think so.

Q. You present when these depositions of Hogan Keel were taken?

A. I was present when depositions were taken at Tishomingo.

Q. Have you examined these depositions that are now on filed here?

A. No sir.

Q. You procured a copy of the depositions of Hogan Keel?

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial.

(No ruling.)

A. If we did I don't remember about it.

Q. You knew what testimony Hogan Keel had given in the deposition in this case.

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial.

By the Court: Objection overruled.

By Mr. Wimbish: Plaintiff excepts.

A. I heard the deposition taken.

Cross-examination.

By Mr. Wimbish:

Q. Mr. Duncan, do you know anything about the form or manner, return or certificate or caption on that deposition?

A. No sir, I never examined it.

294 Q. Have you ever seen it?

A. No sir, don't know as I ever saw it.

Q. Have you ever seen it up to this time except Mr. Bolen had it in his hand and as it now lies on the table?

A. No sir.

Q. You don't know whether there is a signature of a Notary to it, or whether a proper or improper caption, or what style of cause this deposition is, from having seen it, do you?

A. No sir.

Redirect examination.

By Mr. Bolen:

Q. Your co-counsel objected to the introduction of it this morning, he seen it and objected to the introduction of it?

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial—

(No ruling.)

Q. I will ask you Mr. Duncan if you have ever gone to the Clerk's office and inquired?

A. No sir.

By Mr. Wimbish: Objected to, law does not require him to go there and inquire; statute says it must not be introduced in evidence unless on file for one day before the announcement of ready for trial.

295 By Mr. Cutler: I will make a statement then; I had expected to file objections to this deposition; when I came here to make an investigation of the files I did not find it among the files; I did not ask anybody about it. I concluded they concluded probably to use the direct testimony; I did intend to file objection to it; I was present when a part of that deposition was taken.

By Mr. Green: I went about a week or ten days ago; I knew where they kept the depositions, and found these depositions where the Clerk kept them; I don't know whether I spoke to the Clerk about it or not and Mr. Duncan asked me yesterday morning or day before yesterday morning where those depositions were at and I told him to go and look in the lower left hand side of the filing case and he would find them; I went to look to see if they were here; I did not take the precaution to see if they were marked filed; I dismissed it until Mr. Duncan asked me yesterday morning where they were at and I told him where they were at.

C. F. GREEN.

By Mr. Wimbish:

Q. Mr. Green, Hogan Keel was one of the witness- whose testimony was taken?

A. Yes sir.

Q. Hasn't Hogan Keel been here since this case started to trial?

A. No sir.

296 Q. Wasn't Hogan Keel out there in the court room Monday morning?

A. No sir, I did not see him, I would state to the Court I would like to have him, I requested that he come in person.

(Witness Green excused.)

Mr. CUTLER.

Direct examination.

By Mr. Wimbish:

Q. You here Monday morning?

A. Yes sir.

Q. You see Hogan Keel here Monday morning?

A. No sir, I don't remember of seeing him.

(Witness excused.)

By Mr. Bolen: The law is, when anything is lodged with the clerk it is presumed to be filed; when anything is delivered to the Clerk it is considered filed.

By the Court: I will overrule the objection.

By Mr. Wimbish: The plaintiff excepts.

By Mr. Cutler: The defendants Alberson heirs except.

Jury comes around in the box and it is agreed the jury are all present and the cause proceeds before the jury.

297 Deposition of HOGAN KEEL reads as follows:

By Mr. Green: Deposition of Hogan Keel——

By Mr. Wimbish: Object to the introduction of this deposition of Hogan Keel for the reason it is not signed as required by law.

By the Court: Objection overruled.

By Mr. Wimbish: Plaintiff excepts.

(Deposition reads as follows.)

298 STATE OF OKLAHOMA,
County of Pontotoc, ss:

In District Court.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

Notice to Take Depositions.

J. C. Chapman and Wimbish and Duncan his attorneys of Record and David Alberson, Salina Alberson, Sina Alberson, minors, and Willie Monroe and Tom Jones Guardians, and C. E. B. Cutler their attorney of record will take notice that defendant Lottie Carney, will on the 14th day of May, 1913, at the office of The Tishomingo Abstract Company, in the City of Tishomingo, Oklahoma, take the depositions of sundry witnesses to be used as evidence in the trial of the above cause now pending in the District Court of Pontotoc County, Oklahoma, and that said depositions will be taken between the hours of 8 o'clock A. M., and 6 o'clock P. M., of said date and the taking of same will be adjourned from day to day at the same place and same time until completed.

C. F. GREEN,

Attorney for Defendant Lottie Carney.

We, the undersigned attorneys of record for the plaintiff, J. C. Chapman hereby, on the 7 day of May 1913, acknowledge receipt of a copy of the within and foregoing notice.

WIMBISH & DUNCAN,

Attorneys for Plaintiff.

299 STATE OF OKLAHOMA,
County of Johnson, ss:

C. F. Green, being duly sworn, on oath say-, that on the 9th day of May, 1913, he personally placed in the United States Mail at Ada, Oklahoma and sent forward under registered Cover, on said date a true and correct copy of the above notice, properly addressed to C. E. B. Cutler, attorney at law, Coalgate, Oklahoma, and with the postage thereon fully prepaid.

C. F. GREEN.

Subscribed and sworn to before me this 14th day of May, 1913.

[SEAL.]

ROSA MAE COATS,
Notary Public.

Term Expires 1-19-1916.

Heading to Deposition.

Deposition of witness taken to be used in an action pending in the District Court within and for the County of Pontotoc and State of Oklahoma, wherein J. C. Chapman is plaintiff and Lottie Carney is defendant, in pursuance of the Notice hereto attached and at the time and place therein stated, the said J. C. Chapman, plaintiff, appeared by his attorney W. C. Duncan, and the said Lottie Carney, defendant, appeared by her attorney C. F. Green, and the other said defendants, David Alberson, Salina Alberson, Sina Alberson, minors, and Willie Monroe and Tom Jones, Guardians of said minors, appeared by their attorney, C. E. B. Cutler, and thereupon the said defendant, Lottie Carney, produced the following witnesses, to-wit: Hogan Keel, of lawful age, being first duly sworn, depose and sayeth:

300 HOGAN KEEL, being first duly sworn, on his oath, deposes and says:

Direct examination.

Questions propounded by C. F. Green:

State your name?

Hogan Keel.

Mr. Keel, where do you reside?

Close to Reagan, that is my post office.

Reagan, Oklahoma?

Yes sir.

Where — you born, Mr. Keel?

I think I was born in what they used to call Atoka County, Choctaw Nation.

How long did you reside there?

I was a little child when they first moved into the Choctaw Nation.

I don't just remember.

That was in Choctaw Nation?

Yes sir.

What part of the Chickasaw Nation did you reside in?

In the Northeastern part—in Pontotoc County it used to be I believe.

How long did you live there?

I was raised right there. Not exactly in that house, moved from place to place but not over about two miles.

What is your age at this time?

I believe I am 61, I was born in 52.

Mr. Keel, I will ask you during your residence in the Chickasaw Nation if you ever held an official position?

Yes sir.

What was it.

301 At the beginning they used me as Interpreter in the Legislature and from that to Constable and I held that for two years and then I was Sheriff four years and then Representative of the Legislature and then Senator and then I was appointed as District Judge for several days and I quit them and then I was—that was no office—I bought myself license to practice law.

Are you an Indian by descent?

Yes sir.

What tribe?

Chickasaw.

Since you retired from public offices what have you been doing?

Stock raising and farming.

I will ask you if you are a member of the church?

Yes sir.

What church?

Methodist Church.

Do you hold an office in the church?

Yes sir.

What is it?

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial.

By the Court: Objection overruled, not objected to at the time.

By Mr. Wimbish: Plaintiff excepts.

Local Deacon.

Does that entitle you to preach?

Yes sir.

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial.

By the Court: Objection overruled, not objected to at the time.

By Mr. Wimbish: Plaintiff excepts.

302 How long have you been a minister of the Gospel?

4, 5, or 6 years, 5 years going on 6 I believe.

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial.

By the Court: Objection overruled, not objected to at the time.

By Mr. Wimbish: Plaintiff excepts.

Mr. Keel, I will ask you if you know Louisa James during her life time?

Yes sir.

How long did you know her?

I knew her ever since she was a little girl until she died.

About what age was she when you first became acquainted with her?

Maybe about 12 or 13, or something like that.

How long has she been dead?

It must be about 12 years.

I will ask you how intimately acquainted with her you were during her life time?

How intimately? I do not just understand you.

I mean how well you knew her?

The reason I knew her so well was because she lived at our house until she died.

Was your wife living at that time?

Yes sir, I think that was my third wife.

She was living at the time?

Yes sir, she was living at the time.

When she was living at your house did she have a child with her? Yes.

What was its name?

John. They called it John Alberson.

How old was it at the time?

A little infant baby, a sucking baby.

303 When she died was John-ie left in your care?

No, In my wife's care.

How long did he stay with your wife?

He did not stay very long, I don't remember exactly how long.

What became of him?

By Mr. Duncan: We object to what he heard. Hearsay.

By the Court: Objection sustained.

By Mr. Green: Defendants except.

Robert Alberson's mother came after him they said. At the time I was away from home.

Do you know of your own knowledge who got him?

No. I do not know of my own knowledge who got him, only hearsay.

You say that you were acquainted with Eliza James from the time she was about 12 years old until the time she died, and during the time her son John, was with her, I will ask you Mr. Keel, if prior to the birth of John-ie if she was married to anyone?

No sir.

I will ask you if after the birth of John-ie if she was married to anyone?

Yes sir.

Who was she married to?

Amon Pettigrew.

I will ask you Mr. Keel if you were acquainted with Charlie Alberson?

Yes.

By Mr. Wimbish: Objected to, nobody named Charley Alberson in this case.

By the Court: No objection made at the time?

By Mr. Wimbish: No sir.

By the Court: Objection overruled.

By Mr. Wimbish: Plaintiff excepts.

304 At the time of the birth of this child, John-ie, I will ask you if he had a living wife and if he was living with her at the time?

Yes sir.

Did he have any children?

By Mr. Wimbish: Objected to for the same reason.

By the Court: Objection overruled if no objection made at the time.

By Mr. Wimbish: Plaintiff excepts.

Yes sir.

I will ask you, Mr. Keel, if you were acquainted with the reputation of Louisa James for virtue and chastity in the community?

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial.

By Mr. Green: None made at the time.

By the Court: Objection overruled.

By Mr. Wimbish: Plaintiff excepts.

Yes sir.

Was it good or bad?

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial.

By the Court: Objection overruled, not objected to at the time.

By Mr. Wimbish: Plaintiff excepts.

Well, not so good.

Do you know of her associating with questionable characters?

By Mr. Duncan: We object because it is incompetent, immaterial and irrelevant.

By the Court: Objection sustained. Objected to at the time.

305 Mr. Green: Go ahead and state if you know of her associating with questionable characters of men?

Yes, I know of her associating with a good many men.

To refresh your memory, could you recall a man by the name of Samuels coming to your house and taking her away?

By Mr. Duncan: Objected to because it is immaterial, irrelevant and incompetent.

By the Court: Objection overruled. Objected to at the time.

By Mr. Duncan: Plaintiff excepts.

Yes sir.

How long did she remain away?

A year or so.

Was it a habit of hers to take up with men and live with them for a short period?

By Mr. Duncan: We object because it is immaterial, incompetent and irrelevant.

By Mr. Green: That was objected to at the time.

By the Court: Objection overruled.

By Mr. Duncan: Plaintiff excepts.

Yes sir.

Now Mr. Keel, I will ask you the direct question if you know who the father—No that would not be admissible. Do you know Charley Puller?

Yes. I know him.

How long have you known him?

Several years, I don't know exactly.

Did you know him prior to the birth of John-ie?

Yes sir.

I will ask you if at the time, and prior to the time, of the birth of John-ie, if Charley Puller had a living wife?

I do not know much about the child question.

306 Do you know whether or not Charley Puller and Louisa James were ever married?

No sir.

They were never husband and wife to your knowledge?

No sir.

During the time that Louisa James resided at your house with John-ie Alberson, I will ask you if Robert Alberson ever contributed anything to the support of the child?

No sir.

Did he ever visit the child?

No sir.

Did he ever make any claim to you of the child?

No sir.

During the time that Louisa James and the infant child John-ie Alberson was at your house did Charlie Puller ever contribute anything to the support of the child?

No sir.

Did he ever make any claim?

No sir.

Did Louisa James ever publicly, to your knowledge, state that Robert Alberson was the father of the child?

By Mr. Duncan: We object because this is not competent.

By Mr. Green: Well, this is incompetent.

By the Court: Objection overruled.

No sir, not to me exactly. It was all hearsay.

Cross-examination.

By Mr. W. C. Duncan:

Mr. Keel, at the time Louisa came to live with you, where were you living?

At Yellow Springs School House.

Where is that now with reference to the present County?

I believe it is in Coal County now.

About how far from Ada, in which way?

About—I don't know exactly—somewhere about 20 miles, maybe a little over or less.

Which way?

A Little Northwest.

307 Which way is Yellow Springs from Ada?

I understand now, I thought you asked me which *was* was Ada. I believe it must be a little, might call it South but still the right direction would be a little Southeast.

About 20 miles?

Yes sir.

How old was this child when Louisa came to your house?

A little baby.

Three or four months or a year old?

About a year old maybe.

Where did she come from to your house?

She had been living in the Morris Carhee neighborhood.

How far and in what direction was that from your house?

I believe it was just a little Northwest. Just right in that direction (point- with finger) from my house, it was not exactly West.

Was it on Sheep Creek?

Yes sir.

Well, did you know where Charlie Puller lived at that time?

I do not know exactly but he used to live about where Jugg Springs.

And where is that?

This side of old Stone Wall.

And how far is that from the old Carhee place?

About 6, 7, or 8 miles.

Still further West?

No. North from Carhee.

How long did she live on Sheep Creek?

She had been backward and forward.

Prior to the time she came to your house?

Yes sir.

How old was she at that time?

If she had lived she would have been about 40 at this time, and when she died she must have been about 38 maybe older when she died. Of course I did not take notice of her age I had never asked and did not learn.

How long did she continue to live at your house before she died?

Several years. I do not know how long it was.

308 I mean after she came with the child how long was it that she lived at your house?

I don't know, must have been about 8 or 9 something like that.

The boy was about that hight. (Lifts hand about 2 or 3 feet high.)

Of course I did not keep no record of that.

She died before your wife died?

Yes sir.

Now you say you never heard of her living with Charley Puller?

No sir.

Never heard of it at all?

No sir.

Who did she make her home with before she lived with you?

I don't suppose she had a regular place, just go about from place to place.

Who did she live with that you know of?

I suppose she lived with Morrison Carhee. She used to cook.

Did she ever live with a woman on Sheep Creek by the name of Nicee?

Nicee who?

By Mr. Duncan: That is all I know is just Nicee.

Yes I have heard she did, that is only hearsay.

By Mr. Green: We object, because it is incompetent, irrelevant and immaterial.

By the Court: Objection overruled.

How long did she live there?

I don't know exactly how long, maybe a year more or less.

You stated that you first knew her when she was a little girl about 12?

Yes sir.

Who was she living with then?

Collins.

Where does he live?

Near Old Stonewall.

How long did she live with him?

They kindly raised her, she lived with them until she got big enough to go away.

309 Then who did she live with?

Just run about.

What I am trying to get at is the different places she lived at besides your place?

She went around over to Morris Carhee's and around and back and I didn't keep *tract* of her and did not know.

The only place you know of is that Collins raised her and she lived with Morris Carhee—

Mr. Keel: That is the same place.

—and then at your house.

That is about all you know before she came to your house?

Yes sir.

Where was she living when this child was born?

With Nancy Carhee I think, I don't know just exactly.

How far was that from where Alberson lived?

About 7 or 8 miles.

Mr. Keel, at the time you took her into your home you knew her reputation?

Yes sir.

How did you happen to take a woman of her character into your home?

Well she came there. And she claimed kin with my wife. It was not exactly kin folks but my uncle Sampson Sealey claimed kin folks with my wife and she *kindly* claimed kin folks with him.

If you knew she was running around with these men as you say why did you have her in your house?

I don't know. Of course she came there and stayed there until she died. When she came there she quit running around. The reason why my wife kept her was this, she was such good help.

Now you say that Robert Alberson was married at the time she came to your house, did he have any children?

Yes sir.

Did he have any children older than John?

Yes sir.

Do you know the name of the oldest one of Alberson's children?

310 No, I don't exactly know which one was the oldest *they* was two girls and one was a boy. I ought to know they was raised at my neighbors.

Mr. Keel, do you know who furnished the allotment they filed John-ie on?

By Mr. Green: Objected to because it is incompetent, irrelevant and immaterial and because——

By the Court: Objection overruled.

I don't know of my own knowledge but I believe it was Robert Alberson.

You say that she was married after this child was born?

Yes sir.

While she lived at your house?

Yes sir.

What became of her husband?

He died.

Did they have any children?

No sir.

Never did have any?

One was born dead and then when she died she was that way again the second time.

Did she continue to live at your house?

Yes sir.

Was he an Indian?

Yes sir.

You say this child was born dead?

Yes sir one of them.

Did not live at all?

No sir.

When was it she went off with Samuels?

Several years before that.

Do you know whether she ever lived with Judson Collins?

She was raised there.

Do you know who took her away from his house?

No I don't know.

(That is all.)

311 Cross-examination.

By C. E. B. Cutler, Attorney for Alberson minors:

You were well acquainted with Robert Alberson were you not?

Yes sir.

How many years did you know him?

Ever since he was about 12 or 13, of course I did not know him when he was a little chap but they moved close to my place, about 2 miles, and that is why I have known him from there on.

Can you give us the week day, month and year that John Alberson was born?

No sir, I did not keep any record, of course if I had known there was going to be anything like this I would.

Is there any circumstance by which you can remember the year?

No sir.

Is there any way in which you can approximate the year?

No sir.

Did you and Robert Alberson live near each other?

Yes sir, about two or three miles.

Did Robert Alberson live at or near that place during your acquaintance with him until the time of his death?

Yes sir. Since he moved there he lived there until he died.

When did you first become acquainted with the child?

When she came to our house.

Now, Hogan, how old was this child?

About a year old.

What name did it bear?

They called it John-ie.

What other name did it have?

None, until Alberson took it and then they called it John-ie Alberson.

What was the age of the child at the time Robert Alberson took it away?

6, 7 or 8 years old I suppose.

312 Can you refresh your memory so that you can fix the year?

No sir.

Was it 1902?

Somewhere about that time. That was a little before the allotment came in, was about when Robert Alberson came and got the child.

Do you remember a person by the name of Tennessee Sealey living in that neighborhood?

Tennessee Sealey living in that neighborhood? Let me see, I don't know about her, there used to be one Tennessee lived in that neighborhood but she was a colored woman. There was a Tennessee Pettigrew living in that neighborhood.

Do you know of a person by the name of Tennessee Sealey?

There used to be one close to our house, but that was Tennessee Pettigrew.

Was Tennessee Pettigrew married at that time?

No sir.

Do you remember that Louisa James lived near that place?

Near that place? No, I don't know at the time she used to just run around.

How long did Louisa James stay at your place?

She stayed there several years when she came there she quit running around.

Two years?

Worse than that.

Three or four years?

Maybe four years.

Was this child there?

Yes sir.

Did Robert Alberson used to come to see her?

No sir.

Did you know a person by the name of Alexander at that time?

I suppose that was Tennessee's boys, I used to know two of them, Stephenson and Sampson.

Did you know Stephen Alexander's mother?

Yes sir.

Can you not from your best recollection state whether Louisa James lived with Stephens Alexander's mother for some
313 time?

I could not testify as to that, I have no recollection.

Did Louisa James die at your place?

Yes sir.

Do you know about what year?

I don't know that either.

Can you fix about how many years ago?

Maybe somewhere about—of course I hate to tell you that I don't know anything about her and of course I could not state that to be true hardly and I did not come in here for that.

Did you know a person by the name of Francis Foreman?

I know a Francis—was it a man?

Mr. Duncan: Yes, I don't remember that one.

Do you remember Tennessee Sealey's children?

Yes sir.

Do you know whether Francis Foreman was one — her children
or not?

No.

Would you say at this time that John-ie was about six or 7 years of age when he left?

Yes sir.

Do you of your own knowledge know whether or not Louisa James used to live with Robert Alberson?

No sir.

Do you know whether she lived there prior to the time she came to your place?

No sir.

You did not know anything about it?

No sir.

You saw her in that community?

Yes sir.

Can you name the places that she stopped at before she came to your house?

She stopped in that neighborhood and sometimes she would stay a day or a week, anywhere she could get something to eat. She was a flying kind of a woman and I could not keep trace of her.

You stated a while ago that Robert Alberson had a woman living with him, presumed to be his wife at the time——

By Mr. Green: We object to this question, because the testimony shows that he was living with his wife and not his purported wife.

(No ruling)

Mr. Keel: Sometimes the questions is not so plain and I cannot speak English very well.

Robert Alberson, at the time Louisa James began her residence with you, had a woman living with him?

Yes sir.

Do you know whether it was his wife or not?

I suppose so.

Was there a marriage?

That was the general opinion.

Then what you stated about his living with his wife is not true?

That is to the best of my knowledge.

You do not know whether it is the truth or not?

No. That is the best of my knowledge.

You knew the other children of Robert Alberson didn't you?

Yes sir, but I didn't know their names. I know one of the boys, David Alberson, but I did not remember the names of the girls.

You state that this occurred about the time of the allotment?

How is that.

You state in your testimony that about the time that Louisa James came to your house was at the time of the allotment of the Indians?

No sir. At the time Robert Alberson's mother came after John Alberson was about the time of the allotment.

How many children that you know did Robert Alberson have?

Three, is all I know. John Alberson, if he is the dad-y of it. The three I know is three girls and one boy.

You lived there a great many years?

Yes sir.

You could not be mistaken?

I could be, but that is the best of my knowledge.

You are not sure and you have no way of telling what year this was?

No.

315 Would you say it was in the year 1900?

I would be afraid to say I am not sure of it.

You remember when we left 1880 and on up to 1900, was it before 1900 or after 1900?

I suppose it must be about 1900.

That this Louisa James came to your house?

I believe it was worse than that.

About 1903 or 1904?

I could not tell about that.

Was it several years after 1900?

Yes sir I think so.

Did John Alberson ever live with Robert Alberson?

Yes sir.

What was the belief in the community of the relation between John Alberson and Robert Alberson?

Of course since he came after it and claimed it was his son they always thought it was his son.

Now, Hogan, is it not a fact that you have heard it stated and that it was common talk in the community that John Alberson was the son of Robert Alberson?

Yes sir.

Redirect examination.

By Mr. Green:

Was Robert Alberson living at the time he came and took the child?

Yes sir.

Did he publicly acknowledge the child as being his?

Not to me.

Do you know whether he adopted it as being his.

Mr. Bunce: We object.

By the Court: Objection overruled.

No sir, not by law.

I don't think you understand my question?

Yes sir.

Do you know whether there was any other children born to Louisa James besides John Alberson, prior to the time of her marriage to Pettigrew?

No. There was one before she married Pettigrew, she had a girl that was about that high (about two feet high, according to distance from floor to his hand) and she died at our place, I mean the girl was the daughter of Tennessee Pettigrew I was speaking of and I don't think she ever had any other child.

That is all.

Recross-examination.

By Mr. Duncan:

Did you know Robert Alberson's mother?

Yes sir.

Where did she live?

At the same place where Robert Alberson died.

She is the woman that came after the child?

I was told so.

Did John live with her?

They all lived together at the same place in the same little cabin.

John lived there with them and with Robert Alberson?

Yes sir.

This wife that you mentioned a while ago of Robert's was she living or dead when Robert died?

She was dead.

Did Robert live with her until her death?

Yes sir.

They conducted themselves as husband and wife?

Yes sir.

He recognized her as his wife and she recognized him as her husband?

Yes.

Was she the same woman that he was living with when John-ie was born?

Yes.

Mr. C. E. B. Cutler:

This wife of Robert Alberson did you know what her name was, her first name?

Francis.

Do you know about the time she died?

No sir, I don't know.

Do you know about how long they lived together?

Several years. They had three children. Maybe eight or nine, maybe ten years.

317 Do you know whether they were living together at the time this child was born?

Yes sir.

Do you know how long they had been living together?

For sometime.

Were you never in their place before that time?

Yes sir, I had been in their cabin.

You stated that Robert Alberson and Francis Alberson resided at the house where Robert Alberson died?

Yes sir.

Where had Robert Alberson been living before he and Francis lived at this place?

Down on Boggy 8 or 10 miles.

Did Robert Alberson ever live at the place of Tennessee Sealey?

I don't remember. Of course he was a man and I suppose he run around.

You don't know who he lived with before he lived with Francis?

He lived with his mother and dad-y.

Stayed there all of the time?

I don't remember that he stayed anywhere else.

That is all.

That is all.

HOGAN KEEL.

318

Certificate Attached to Deposition.

I, Rosa Mae Coats, a Notary Public, and Stenographer, within and for the County of Johnston and State of Oklahoma, do hereby certify that the above named Hogan Keel, the witness whose name is subscribed to the foregoing Deposition, was by me first duly sworn to testify the truth, the whole truth and nothing but the truth, in the case aforesaid, and that the Deposition by him subscribed was

reduced to writing by me, and subscribed by the respective witness in my presence, and the same was taken on the 14th day of May, A. D. 1913, between the hours of 8 o'clock A. M. and 6 o'clock P. M. of the said day and at the office of the Tishomingo Abstract Company, in the Town of Tishomingo, in the County of Johnston and State of Oklahoma, as specified in the notice thereto attached, and that I am not attorney or a relative of either of said parties, or otherwise interested in the event of said action.

[SEAL.]

ROSA MAE COATS,
Notary Public, Johnston Co., Okla.

Term expires 1-19-1916.

319

Gov. WM. L. BYRD.

Direct examination.

By Mr. Green:

Q. Your name Wm. L. Byrd?

A. Yes sir.

Q. You reside in Ada Mr. Byrd?

A. Yes.

Q. What official position did you formerly hold with the Chickasaw Government?

A. Several.

Q. What were they?

A. Superintendent Public Instruction; delegated Governor.

Q. What years were you Governor?

A. Eighty-eight to ninety-three.

Q. Vote of the people or appointed from Washington?

A. Vote of the people.

Q. Governor I will ask you if you knew Louisa James during her life time?

A. Yes.

Q. You know Lottie Carney, the defendant in this case?

A. Yes.

Q. You know their father and mother?

A. Knew their father.

Q. Dr. Tubby?

A. Dr. James was his English name.

Q. You know about the time the parents of these children died?

A. I did not know the time, I knew the father.

Q. He is dead?

A. Yes sir.

Q. They have any other children to your knowledge except these two?

A. None that I know of.

320

Q. Louisa James is dead?

A. Yes.

Q. And Lottie Carney be the only living heir?

A. Yes.

- Q. You know Bob Ford?
A. Yes.
Q. What relation is Bob to the defendant Lottie Carney?
A. Mother in law, or step mother in law.
Q. You know Charley Puller?
A. Yes.
Q. Did you know his wives?
A. Yes.
Q. What was his first wife's name?
A. Louina.
Q. His second wife?
A. Betsey.
Q. They have any children?
A. Yes.
Q. Did he ever have any other wife except those two?
A. Not that I know of.
Q. And how intimately were you acquainted to the deceased, Louisa James?
A. Saw her quite often.
Q. Could you state whether or not she was married Governor?
A. Not that I know of, never heard of her being married.
Q. Where did you live at that time when you knew her?
A. Stonewall, now Frisco.
Q. Where did she live?
A. Yellow Springs and up on Boggy, and Judson Collins' place.
Q. How far was Yellow Springs from there?
A. Eight or nine miles from Stonewall.
321 Q. How often did you see her Governor?
A. I could not tell exactly how often I did see her.
Q. You know Johnnie Alberson?
A. Yes, seen him.
Q. You know about the time he was born?
A. No I don't remember about the time he was born.
Q. How large was he, or how old was he when you did know him?
A. Little fellow, possibly four or five years old, maybe older.
Q. You know Robert Alberson?
A. Yes.
Q. Was Robert married?
A. Yes.
Q. You know his wife?
A. Yes.
Q. What was her name?
A. Francis Smoke when he married her.
Q. They have a family?
A. Yes, I have seen two or three children.
Q. You know whether he was ever married to Louisa James?
A. Don't know that he ever was.
Q. How far he live from you?
A. We will say eight or ten miles possibly.
Q. Governor, I will ask you if Louisa James was reputed to be

a single or married woman during the time you were acquainted with her?

A. Single.

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial, not proper way to prove it.

By the Court: Objection overruled.

By Mr. Wimbish: Plaintiff excepts.

322 Q. You said you knew John Alberson from the time he was a small boy four or five years old up until he was grown?

A. Yes.

Q. Now, Governor I will ask you to state if he was reputed to be a bastard or illegitimate child in the community in which he was raised up?

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial.

By the Court: Objection overruled.

By Mr. Wimbish: Plaintiff excepts.

A. Yes, he was considered an illegitimate child.

Cross-examination.

By Mr. Wimbish:

Q. That is Lottie Carney sitting back there in the Court room now?

A. Yes, that is her.

Q. You say you never heard of this woman being married?

A. No.

Q. You did not keep any records in those days?

A. I did not, the County did.

Q. Kept record of marriages?

A. Oh! yes.

Q. Didn't issue any license to you?

A. Yes.

Q. When did they commence issuing licenses Governor?

A. 1855.

Q. Governor I will ask you if they did not have a custom that they went—couple people decided to get married that they went to a Minister and entered into the contract before the Minister

323 and he simply gave them the certificate.

A. No sir.

Q. Wasn't that the custom?

A. No sir.

Q. Never was such a custom as that?

A. No sir.

Q. And wasn't it the custom among those Indians in those days to make marriage contracts even after the passage of this law you talk about, and were recognized as legitimate marriages among the people?

A. No sir.

Q. I will ask if your Chickasaw Legislature in 1876 passed an act legalizing all such marriages?

A. Yes they passed an act of that kind once.

Q. Did they ever pass one making those kind of marriages illegal?

A. This did, went all the time since 1855.

Q. Have you a copy of the Chickasaw laws?

A. No sir.

Q. If we will furnish you one——

A. You furnish me a copy of the Constitution I will show you a constitutional provision.

Q. You say it was not the custom in those days?

A. No sir.

Q. Governor Byrd, weren't they married all over this country, didn't an Indian man and Indian woman agree to live together as man and wife and go before a Minister and make that agreement without a license, and wasn't such marriages as that recognized among the Chickasaws?

A. No sir, not acknowledged by law as legal.

324 Q. You say it was not acknowledged by law as legal, by whom was it not acknowledged?

A. By the Courts.

Q. I will ask you if white people did not marry that way as late as 1880 and 1890?

A. I don't know what the white people did, I am not so well acquainted with them as I am for the Indians.

Q. And wasn't that recognized as legal marriages here in the Indian Territory both by Indians and by white people?

A. As intermarried citizens?

Q. No sir, did not say that; marriages between white people and marriages between Indians?

A. That be intermarried.

Q. No sir, I mean pair and pair.

A. White and red both.

Q. Yes?

A. Not that I know of, never heard of that.

Q. Never heard of such a thing?

A. Yes.

Q. You know Eastman Kilcrease?

A. Yes.

Q. I will ask you if Eastman Kilcrease did not live with a woman from ten to fourteen years right here as your neighbor and she and he were recognized as man and wife?

A. No I don't know that.

By Mr. Bolen: Objected to as incompetent, irrelevant and immaterial, isolated case, and only way you could possibly get in such a marriage as this, would be the general custom and not some isolated case.

By the Court: Objection overruled.

By Mr. Bolen: The defendants except.

325 A. Don't know about that; if he did he was subject to fine and imprisonment, if it be that way he would have been subject to a law.

Q. You know Sis Collins?

A. Yes.

Q. Didn't she and Eastman Kilcrease marry that way?

A. Not that I know of.

Q. Never heard of it?

A. Not in that manner.

Q. They lived together?

A. Yes lived together as man and wife, so I suppose they were regularly married.

Q. You don't know whether they were regularly married or not?

A. No sir, I was not present.

Q. And you don't know whether Louisa James and Charley Puller were ever married or not do you?

A. No sir, I never heard of it.

Q. And you never heard of Eastman and this woman marrying either?

A. Yes.

Q. Who did you ever heard say there was a marriage ceremony performed between them?

A. I don't know, but what it was her father, he and I were good friends.

Q. He is dead?

A. Yes sir, but he was a very strict man, strict law abiding man, her father was.

Q. Governor you and Bob Ford are partners in some business are you not?

A. No sir.

326 Q. Have not been partners in these depredation claims?

A. No sir.

Q. How many cases have you ever testified as a witness in cases in his behalf?

A. One, or possibly two.

Q. Testified in one at Madill?

A. Yes, that was one.

Q. You testified at Ardmore?

A. Yes.

Q. How many you testified in at Ardmore?

A. One, not his though.

Q. He was working it up though?

A. I don't know, summoned me there and asked me what I knew about the case and — told them.

Q. Those the only two?

A. That is the only two I remember.

Cross-examination.

By Mr. Cutler:

Q. You stated you did not know whether Robert Alberson and

Louisa James were married or not, you meant to say you don't know.

A. No, I don't know.

Q. You don't want to state they were not married either by custom or minister?

A. No sir, I never heard it.

Q. You say you knew Charley Puller?

A. Yes.

Q. You did not have any more special interest in Charley Puller than Robert Alberson?

A. No sir.

327 Q. Nothing in that relation that caused you to have any greater knowledge,—one over the other?

A. Knew them both about alike.

Q. How old was John Alberson when you became acquainted with him?

A. Little boy, four or five years old.

Q. Where did you see him?

A. I think at Stonewall.

Q. You followed him as he grew up?

A. See him occasional-y.

Q. You have any interest in him?

A. None at all.

Q. Your observation *in* him was merely casual?

A. Yes, see him.

Q. You would not want to state to this jury every marriage that has ever been perpetrated in the Chickasaw Nation between man and wife was not according to the Chickasaw laws and customs?

A. I don't know about that, some men might have violated the law.

Q. You don't want to tell this jury that you have such extensive knowledge and thorough and wide acquaintance of facts, and such a wide interest in this matter that you could make any assertion of that matter, do you?

A. Had it occurred in a lawful way I think I would have heard of it, as I lived at the Court house.

Q. You don't know whether it occurred in a lawful way or not?

A. No, but if it had I think I would have heard of it.

Q. You don't want to tell this jury that that did not occur?

A. I want to tell them just what I have stated.

328 Q. They might have and you not heard it?

A. Yes, lots of things might have happened and I not know it.

Q. You have any interest in the results of this tittigation?

A. No sir.

Redirect examination.

By Mr. Bolen:

Q. What you mean to say, you lived near by them, and knew them well?

A. Yes.

Q. And if they were ever married you never heard of it?

A. Never heard of it.

Recross-examination.

By Mr. Wimbish:

Q. Were you not at Tishomingo when the testimony of Hogan Keel was taken in this case?

A. Yes.

Q. You were there the day the deposition was taken?

A. Yes.

Redirect examination.

By Mr. Green:

Q. I will ask you if you were present in the room when they were taken?

A. No I was not in the room.

Q. State whether or not you were at Tishomingo on other business and it had no connection with this.

A. Yes, I was on other business.

(Witness excused.)

329

TOM PENDLETON.

Direct examination.

By Mr. Green: *

Q. Your name Tom Pendleton?

A. Yes sir.

Q. You one of the defendants in this case?

A. Yes.

Q. Mr. Pendleton, I will ask you if you are in possession of the land in controversy here?

A. Yes sir, I live on it.

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial, no controversy over that, admitted by all parties he is on there as tenant.

By Mr. Green: Let the record show that.

By Mr. Green: Defendants Tom Pendleton and Carney rest.

330

Further Testimony for the Alberson Heirs.

By Mr. Cutler: On behalf of Davis and Salina and Sina Alberson, defendants, we offer Census card, certified to by J. G. Wright, Commissioner to the Five Civilized Tribes, I think on August 20th, 1913; Number of Census card 136; the chief party or serious parties in this Census card is Robert Alberson on the Daws Roll No. 407, Exhibit No. a, Alberson Minors' Exhibits.

By Mr. Green: No objection.

By Mr. Wimbish: No objection.

331 DEFENDANTS ALBERSON MINORS' EXHIBIT "A."

Residence: Pontotoc County, Chickasaw Nation. Card No. —.
Post office: Jeff, Ind. Ter. Chickasaw Roll. Field No. 136.

Dawes Roll No.	Name.	Relationship to person first named.	Age.	Sex.	Blood.
407.	Alberson, Robert		30	M.	Full
[408.	" Francis	wife	20	F.	"]*
409.	" John	Son	10	M.	"
410.	" David	"	6	M.	"
411.	" Salina	Dau.	3	F.	"
412.	" Sina	"	3	"	"
413.	" Nicey	Mother	70	"	"

Tribal enrollment.

Year.	County.	No. page.
1897.	Pontotoc	52
[1897.	"	52
1897.	"	52
1897.	"	52
1897.	"	52
1897.	"	52

Tribal enrollment of parents.

Name of father.	Year.	County.
Elijah	dead	Chickasaw Roll
Thompson	"	"]*
No. 1		
No. 1		
No. 1		
No. 1		

Name of mother.

Year.

County.

Nacey

1897

Pontotoc

Mason

Dead

Chickasaw Roll

Wisey

"

"

No. 2

No. 2

No. 2

Dead

Chickasaw Roll

332 Enrollment of No. 123,456 and '7 hereon approved by the Secretary of Interior Dec. 12, 1902.

No. 2 on 1896 Chickasaw Roll as Francis.

No. 7 Died Sept. 17th, 1902; proof of death filed Oct. 17, 1902.

No. 2 died March 5, 1902; proof of death filed Dec. 13, 1902.

No. 2 died March 5, 1902; Enrollment cancelled by Department May 24, 1904.

No. 7 died prior to Sept. 25, 1902, not entitled to land or money; see Indian Office letter Aug. 1, 1907. (I. T. 65096—1907.)

P. O. Jesse, I. T.

Sept. 3/98.

[*Erased in copy.]

Department of the Interior.

Commissioner to the Five Civilized Tribes.

Muskogee, Oklahoma.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians, and the disposition of the land of said tribes, and that the above and foregoing is a true and correct copy of Chickasaw Indian census card No. 136.

J. G. WRIGHT.

Commissioner to the Five Civilized Tribes.

By T. C. HUMPHRY, JR.,

Clerk in Charge of Chickasaw Records.

Aug. 20, 1913.

C. H. D.

333 By Mr. Cutler: Defendants Alberson minors rest.

STEVEN ALEXANDER.

Recalled—further cross-examination.

By Mr. Wimbish:

Q. Tell the jury if you did not go to the pen for stealing Jim Leader's horse?

A. That is what I was accused of, but I went for whiskey.

Q. Tell the jury if you did not go to the pen. for stealing Jim Leader's horse?

A. That is what they sent me for, but charged with whiskey, sent me.

Q. Charged with whiskey and convicted you for stealing a horse.

—, —.

Redirect examination.

By Mr. Bolen:

Q. They did not let many Indians by in those days, did they?

By Mr. Wimbish: Objected to.

By Mr. Bolen: Stand aside.

(Witness excused.)

334

Rebuttal Testimony for the Plaintiff.

EASTMAN KILLCREASE.

Gib Clark, Interpreter.

Direct examination.

By Mr. Wimbish:

Q. What is your name?

A. Eastman Kilcrease.

Q. You know Louisa James?

A. I know the name of Louisa, but I don't know the James part.

Q. You ever live with that woman?

A. No sir.

By Mr. Bolen: Objected to not in rebuttal.

By the Court: Objection overruled.

Q. Did you ever live with her at Underwood's down on Sheep Creek?

By Mr. Bolen: Objected to, nobody swore he did.

By the Court: Rebuttal testimony of Simon Frazier.

Q. Bond Underwood. He ever live with her at Bond Underwood's?

A. When she was at Bond Underwood's I came from the Choctaw Nation and when I came I seen her there.

Q. Did you ever put up with her; bed up together?

A. No sir.

Cross-examination.

By Mr. Bolen:

Q. Didn't you sleep with her at Bond Underwood's?

A. No sir.

Q. Didn't you have intercourse with her at Bond Underwood's?

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial, not cross-examination of any matter we brought out.

By the Court: Objection sustained.

By Mr. Bolen: Defendants except.

335 Q. How long you stay there at Bond Underwood's?

A. I stayed there about two days.

Q. How long she stay there?

A. I do not know how long she stayed there.

Q. Who did you sleep with while you were there?

A. No sir.

Q. Who did you sleep with?

A. I do not know who she slept with.

Q. Who did you sleep with?

A. Did not sleep with anybody.

Q. What did you sleep on?

A. Pal-et.

Q. She sleep in the same room?

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial.

By the Court: Objection sustained.

By Mr. Bolen: The defendants except.

Q. Was it cold weather or hot weather when you were there?

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial.

(Question withdrawn.)

(Witness excused.)

336

W. E. LITTLE.

Direct examination.

By Mr. Wimbish:

Q. State your name?

A. W. E. Little.

Q. Mr. Little, how long have you lived in the Chickasaw Nation?

A. Been here continuously for about thirty-seven years.

Q. Mr. Little are you familiar with the customs and manners of the Indians, say from twenty to thirty years ago?

A. Yes sir.

Q. As to their manner of marrying?

A. Yes sir.

Q. I will ask you to state whether or not it was the custom for two Indians—state to the jury what the custom was?

By Mr. Bolen: Objected to as incompetent, irrelevant and immaterial, evidence shows there was a statutory enactment since 1855 and could not be a custom in contravention of law.

By the Court: Objection overruled.

By Mr. Bolen: Defendants Carney and Pendleton except.

By Mr. Wimbish: We want to tender to the defendants constitution and laws of the Chickasaw Nation.

By Mr. Bolen: The defendants have closed.

Q. Answer the question.

A. Great many of them just took up together and lived together along twenty-five or thirty years ago, really up until the time the Arkansas law was put over this country. I was Marshallman at Fort Smith when this Indian Territory law was established in here and the Arkansas law was spread over this country.

Q. They would just take up together as man and wife?

A. Yes.

337

Q. How were they recognized in your community as to man and wife when make an agreement of that kind?

A. Always recognized among one another and among the people, because it was their custom.

Q. Mr. Little state whether there was a Minister that performed whatever ceremony they had—I will ask you to state whether or not they issued a lisenice?

A. No sir.

Q. What was the custom when they married in that way?

A. They just got the preacher; go to some Preacher and have them perform the ceremony.

Q. What, if anything would the Preacher give them?

A. Not generally give them anything; did get to issuing a certificate, to show they were man and wife and sometimes they would not issue them any; told them to go ahead.

Q. When they would get those certificates what would the parties do with them?

A. I don't know.

Q. You don't know—you knew parties who married in that way?

A. Yes sir.

Q. And were recognized as man and wife?

A. Yes sir.

Cross-examination.

By Mr. Bolen:

Q. You are not an Indian?

A. No sir.

Q. Never did study the Indian Laws?

A. No sir.

338 By Mr. Wimbish: Objected to, we are not seeking to prove a law, we are seeking to prove a custom.

By the Court: Objection sustained.

By Mr. Bolen: Defendants except.

Q. I will ask you if the County Judges of the Chickasaw Nation haven't had a copy of marriage record always, ever since you came to this country?

A. Where reported to him I guess would, lots of times never reported.

Q. Where go to the County Judge the County Judge would give them lisenice and marry them?

A. Heap of them did not get any lisenice.

Q. When go to the County Judge the County Judge would give them lisenice.

A. I don't know how they issued lisenices; I don't know whether any lisenice ever issued.

Q. You simply say, they were permitted to take up together and tell the people they were married; take one another for man and wife and never prosecuted them for it?

A. No sir, they lived that way until the Arkansas law and scared them up; they could be handled for bigamy or adultery, and they went and married over again, married after the Aarkansas law was put over this country.

Q. They had another custom, go and take a woman and keep her a week or two and go and get another?

A. Some married and stayed a while and perhaps quit.

Q. You mean take the woman and sleep with her a while and go and get another one and sleep with her a while?

A. Might have done that.

Q. Lots of them done that didn't they?

A. I guess so.

339 Redirect examination.

By Mr. Wimbish:

Q. You said you knew parties who done that?

A. I know one family in our country that married after the Arkansas law came in effect and had a family.

Q. Who was that?

A. Bill Stick or Nellie Cochubby.

(Witness excused.)

340

LEVI BROWN.

Gib Clark, Interpreter.

Direct examination.

By Mr. Wimbish:

Q. Your name is Levi Brown?

A. Yes sir.

Q. How old are you?

A. Thirty-nine.

Q. Levi, do you know Louisa James and Charles Puller?

A. Yes sir.

Q. Do you know when they lived together down at Nicey Cahee's place?

A. Yes sir I saw them there.

By Mr. Bolen: Object to this, not rebuttal evidence; testimony in chief and presupposes a fact not proven by this witness.

By the Court: Go ahead.

Q. Did you know Lina, Charles' first wife?

A. Yes sir.

Q. At that time was Louina living or dead?

A. I believe that after the death of her.

Q. You knew his boys Charles' boys, Peter and Steven?

A. Pet and Steve as I knew them.

Q. Where were Peter and Steve living at that time?

A. They were there at Nicey's.

Q. Nicey's and Morris'?

A. Yes sir.

Q. Louina was their mother was she not?

341 A. I don't believe I can state the facts about the mother of these children. It is a fact Louina was Charles' wife.

Q. Charles' first wife?

A. Yes sir.

Q. At the time Pete and Steve were there at Morris' was Louina living or dead?

A. After the death of her when I saw them there.

Q. How long have you been married Levi?

A. About twenty-five years ago.

Q. Levi do you know how the Indians married in those days, the time you married?

A. I cannot state the facts about how they married.

Q. How did you marry?

By Mr. Bolen: Object to that, incompetent, irrelevant and immaterial.

By the Court: Objection sustained.

By Mr. Wimbish: Plaintiff excepts.

Cross-examination.

By Mr. Cutler:

Q. You know Robert Alberson?

A. Yes sir.

Q. You know about Robert Alberson and Louisa James living together as husband and wife?

A. I do not know sir.

Cross-examination.

By Mr. Bolen:

Q. Where did Louina die, Charley Puller's first wife?

A. I do not know sir where she died.

Q. Where was you living at the time she died?

A. Right on this side of Mill Creek, living there when she died.

342 Q. Where was Charley Puller living?

A. He was somewhere about the Gum Springs along about then.

Q. Was he living with Louina?

A. Yes sir.

Q. Hadn't he taken up with Betsey, hadn't he taken up with Betsey before Louina died?

A. Betsey what, you speaking——

Q. Charles' last wife, Betsey?

A. It was a long time after the death of her.

Q. Before he took up with Betsey.

Q. Did you know Charles' last wife?

A. Yes sir.

Q. What was her name?

A. Betsey.

Q. Hadn't Charley taken up with Betsey before his first wife died?

A. His first wife died a good long while before he took up with Betsey.

Q. Where was Louisa—Louisa James living when John Alberson was born?

A. At Morce Cahee's, Nicey Cahee's.

Q. Where was Charles Puller living when John Alberson was born?

A. I do not know sir, where he was.

Q. Did Charley Puller live with Louisa after John Alberson was born?

A. I do not know sir.

Q. Did he ever live with Louisa—did Charley Puller ever live with Louisa?

A. I stated a while ago they were living together.

343 Q. Where did they live together?

A. Right at Morris Carhee's.

Q. How long?

A. I couldn't say whether six months or a year.

Q. He had been gone before John was born?

A. I am not positive about that; I know never seen the child; I knew they were living together there.

Q. Wasn't Louina living over there at another place at the time Charley was down there with Louisa at Nicey's?

A. No sir, it was after the death of her.

Q. You know that she was dead at the time Charley was living with Louisa James?

A. Yes sir, I knew—I saw the two over there after the death of her, but I saw the two children there.

Q. Never asked him about that. Ask him if at the time Charley was living with Louisa at Nicey's, ask him if Louina was dead then, when Charley and Louisa were staying at Nicey's, staying there, was Louina dead, his first wife?

A. After the death of her I seen them there.

Q. How far you live from there?

A. Two and a half miles.

Q. How many times you see them over at Nicey's?

A. Several times in a week.

Q. In one week?

A. Yes sir.

Q. See him any more except that week at Nicey's?

A. I seen her over there several times.

Q. At Nicey's?

A. Yes sir.

344 Q. You see Charley there after that?

A. Yes sir.

Q. How old are you now?

A. Thirty-nine.

Q. You were sick when this case came up wasn't you?

A. Yes I was sick.

Q. When did you get well?

A. This morning.

Q. Who came after you and told you you would have to be well?

A. Scribners.

Q. Which Scribner?

A. Stonewall.

Q. Who told you they have to prove Louina was dead before Charley took up with Louisa?

A. I knew that myself.

Q. Anybody tell you that since you come here?

A. No sir.

Q. Anybody ask you about that until you got on the stand?

A. No sir, have not heard from nobody.

(Witness excused.)

345 DANIEL HARRISON (this witness being one of the witness-mentioned in the Motion for continuance).

Direct examination.

By Mr. Wimbish:

Q. Mr. Harrison, you are the same Daniel Harrison who testified in this case yesterday?

A. Yes sir.

Q. Fifty-one years old and-raised here in the Chickasaw Nation?

A. Yes.

Q. You are a Chickasaw yourself?

A. Yes sir.

Q. Are you familiar with the custom of Chickasaw marriage customs twenty to thirty years ago?

A. Yes sir.

Q. You may state to the jury there how the Indians married in those days?

A. Did not marry in those days, only mighty few of them; go together and live as man and wife.

Q. Mr. Harrison when they would get together and live together as man and wife that way, I will ask you—I will get you to state to the jury whether or not they were regarded as man and wife in the community?

A. Yes sir.

Q. Their children all recognized as legitimate?

A. Yes sir.

Q. When they did marry, when they had a ceremony; I will ask you to state to the jury how that was done; First, I will ask you this question; was *their* a liscence issued?

A. No sir.

346 Q. State how they would do?

A. When wanted to marry go to the preacher and ask him to marry them, when he married them, he would give them a certificate.

Q. What did they do with that certificate?

A. Some would record it, and some would not.

Cross-examination.

By Mr. Bolen:

Q. Under the law they had to go to the County Judge, didn't they?

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial.

(Question withdrawn.)

Q. Daniel they would get a woman to stay with them a few days and then go and get them another one?

A. Lots of that.

Q. Get a woman and lay up with them a few days and then go and get them another one?

A. Yes sir.

Q. Just like they do now?

A. Yes sir.

Q. Did not call that marrying did you?

A. No, not call that marrying.

(Witness excused.)

347

JOHN FOSTER.

Gib Clark, Interpreter.

Direct examination.

By Mr. Wimbish:

Q. You are the same John Foster that formerly testified in this case?

A. Yes sir.

Q. Do you know the custom of the Indians about marrying in the Chickasaw Nation from twenty to thirty years ago?

By Mr. Bolen: Objected to, incompetent, irrelevant and immaterial.

By the Court: Objection overruled.

By Mr. Bolen: Defendants except.

A. Yes sir.

Q. What was that custom; how did they marry?

A. At that age of the world sometimes they married; what I mean by that, did not get no licence.

Q. How did they do, just take up with one another?

By Mr. Bolen: Objected to as leading.

By the Court: Objection sustained.

Q. State how they would do?

A. I cannot state the facts about how long it was, but to my remembrance, away back they did not marry, they took up with each other; after they formed the law then this marrying took place.

Q. Were people who took up that way recognized as husband and wife in the community in which they lived?

A. They were recognized the same as if they were married, when they took up together.

348 Q. When they did marry; that is, when they did have a ceremony performed would they have to have a licence when they went to the Minister?

A. When they goes before the Preacher and he marries them he gives them a paper, but not considered a licence.

Q. Give them a certificate?

A. Yes sir.

Cross-examination.

By Mr. Bolen:

Q. When John Alberson was born, ask him if that custom had not been out of existence for several years; when John Alberson was born, ask him if they had not quit that custom, and if they did not have a law they had to follow?

By Mr. Wimbish: Objected to, incompetent, irrelevant and immaterial to the last part of the question. We don't object to the first part of the question, but we object to the last part of the question, "They had a law they had to follow."

By the Court: I think that calls for two answers.

Q. I will ask you if that custom had not ceased when John Alberson was born?

A. Somewhere about there when they had the law of marrying.

Q. You remember when Overton was Governor?

A. Yes sir.

Q. Was that 1876?

A. Somewhere near about that.

Q. Did they quit this custom when the law was passed about marrying them?

349 A. After they were ruled by the law, they quit that; Some of them quit and some of them did not.

Q. Did most of them quit that custom?

A. Yes sir, right smart abided by the law and some did not.

By Mr. Wimbish:

Q. Do you mean when the Indian Law was passed or when the United States law was passed?

A. When the Indian law was enforced.

(Witness excused.)

350

JILAS HAWKINS.

Gib Clark, Interpreter.

Direct examination.

By Mr. Wimbish:

Q. State your name?

A. Jilas Hawkins.

Q. Are you familiar with the custom of the Indians with regard to marrying in the Chickasaw Nation for the last twenty or thirty years?

A. There was no marrying to amount to anything away back at that time.

Q. How did they marry; what did they do?

A. At that time any man that had a woman—if he left her he go away and that considered his wife at that time.

Q. And if they lived together how were they regarded in the community as husband and wife or not?

A. Yes sir they were considered man and wife as long as she treated him right, they were considered as man and wife.

By Mr. Bolen: Objected to, not responsive to the question; ask be stricken out; that ought to be stricken out "as long as she treated him right."

By the Court: Motion overruled.

By Mr. Bolen: Defendants except.

351 Q. When a ceremony was performed was there or not a licence issued or what did the parties do when a ceremony was performed by a preacher?

A. When they married at that time; that is, County Judge or Preacher marries him, they will give them a piece of paper and they will take that piece of paper and put it on record that such and such a man is man and wife.

Q. The party marrying could do as he pleased about putting it on record couldn't he?

By Mr. Bolen: Objected to as leading and suggestive.

By the Court: Objection sustained.

Q. Did the parties always put these papers on record in every instance?

By Mr. Bolen: Objected to, effort to prove that people violated the law.

By the Court: Objection sustained, no issue about that in this case.

By Mr. Wimbish: Plaintiff excepts.

Cross-examination.

By Mr. Bolen:

Q. When they passed a law they quit just taking up together, didn't they?

A. After they formed the law, all of them that took up together they considered them as man and wife under that law, but since they formed the law, if they found a man and wife living together they took them to the Court and either separated them or made them marry.

352 Q. And whipped lots of them for it, didn't they?

By Mr. Wimbish: Objected to as incompetent, irrelevant and immaterial.

By the Court: Objection overruled.

By Mr. Wimbish: Plaintiff excepts.

By the Court: It is a question about whether they recognized the law or recognized the custom.

Q. Ask him if they did not whip them for taking up together?

A. No sir, did not whip them, when came together that way took them before the Court and either made them marry, and if did not marry they fined them and put them in jail, and if still continued they whipped them.

Q. Did they ever whip Charley Puller for taking up with a woman?

A. Yes sir, he was arrested one time.

Q. What woman was it, he took up with?

A. No sir, I don't know anything about him being arrested concerning a woman.

By Mr. Wimbish: Move the answer to the other question be stricken out, if he was arrested for something else.

By the Court: Objection sustained.

(Witness excused.)

353 DANIEL HARRISON recalled further.

Direct examination.

By Mr. Wimbish:

Q. One question we omitted to ask this witness when he was on the stand the first time; probably be testimony in Chief, but we would like to get it in. Q. At the time John Alberson died he was not married was he.

A. No sir.

(Witness excused.)

By Mr. Wimbish: Plaintiff rests.

354 *Sir Rebuttal for the Defendants Carney and Pendleton.*

By Mr. Bolen: We want to offer this Chickasaw law in evidence as Exhibit "4." An Act to record marriages, etc. Shown on page 76.

Sections 1-2-3-4-5-6 of the Constitution and Treaties and laws of the Chickasaw Nation of date, Approved October 12th, 1876.

By Mr. Wimbish: No objection.

By Mr. Cutler: No objection.

By Mr. Bolen: And we desire to offer in evidence on the part of Lottie Carney An Act to Legalize marriage by liscence, page 78; Sections 1-2 of the Chickasaw Treaties and laws of the Chickasaw Nation, Approved October 12th, 1876; as Lottie Carney's Exhibit "5," including the preamble.

By Mr. Wimbish: No objection.

By Mr. Cutler: No objection.

By Mr. Bolen: Defendants Carney & Pendleton rest.

By Mr. Cutler: We rest.

By Mr. Wimbish: We rest.

355

EXHIBIT "4."

"An Act to Record Marriages, etc."

Section 1. Be it enacted by the Legislature of the Chickasaw Nation, that from and after the passage of this Act, all persons marrying in this Nation, shall have the same recorded in the Clerk's office of the County Court in the County in which they may reside.

Sec. 2. Be it further enacted, that all persons neglecting to record their marriages, within one month from the time they are married, shall be fined in a sum not less than five nor exceeding ten dollars, at the discretion of the Court having jurisdiction of the same.

Sec. 3. Be it further enacted, that all fines imposed under this Act shall be collected by the Sheriff or Constable, by order of the County Court, in the County in which such violation may have occurred.

Sec. 4. Be it further enacted, that all marriages in this Nation shall be solemnized by any Judge or ordained preacher of the Gospel; for every couple joined together in the bonds of matrimony, the person pronouncing the ceremony shall, for every such service, receive the sum of one dollar from the persons joined together.

356 Sec. 5. Be it further enacted, that all persons who are living together out of wedlock shall be compelled by the County Judge to be lawfully joined together in the bonds of matrimony; and any person refusing to be lawfully joined together shall be compelled to pay a fine of not less than twenty-five, nor exceeding fifty dollars.

Sec. 6. Be it further enacted, that the County Judge shall cause all fines imposed under the above act to be collected by the Sheriff or Constable, and when collected, to be placed in the County Treasury, for county purposes.

Approved, October 12, 1876.

B. F. OVERTON, *Governor*.

357

EXHIBIT "5."

"An Act to Legalize Marriages Solemnized by Licensed Preachers.

Preamble.

Whereas, it is enacted in Section 4, of the "Act to record Marriages" that any Judge of the Chickasaw Nation, or any ordained

185

preacher of the Gospel, shall have the power to perform the marriage ceremony.

And whereas, many of our citizens have been united in the bonds of matrimony by preachers not ordained, nor authorized to marry individuals by the regulations of the church to which such preachers belong;

And whereas, the District Court of the Chickasaw Nation, in the County of Pontotoc, at the January term, did decide that all such marriages were unauthorized by the church to which such preachers belong, and consequently both canonically and legally void;

And whereas, the persons so marrying, as well as the licensed preachers performing the ceremony, did the same in good faith, and without any doubt whatever of the lawfulness of it;

And whereas, by the decision in question, the parties living together are not husband and wife, nor the children of such marriages legitimate; therefore,

358 Section 1. Be it enacted by the Legislature of the Chickasaw Nation, that every marriage which has been solemnized by any (un) ordained licensed preacher, within the limits of the Chickasaw Nation, before the passage of this act, is hereby legalized, and every child born in marriage, the offspring of it, is hereby declared to be legitimate, and shall be entitled to all the rights, privileges and immunities thereof, just the same as if the marriage ceremony had been performed by any lawful Judge of this Nation, or any ordained preacher of the Gospel, as contemplated in the 4th section specified in the preamble of this Act.

Sec. 2. Be it further enacted, that all marriages which may hereafter be solemnized by licensed preachers shall be lawful, just the same as if the ceremony was performed by an ordained minister of the Gospel, or Judge of this Nation; and this Act shall be in force from and after its passage.

Approved, October 12, 1876.

B. F. OVERTON, *Governor*.

359 It is now 5:00 P. M. and the Court takes a recess until tomorrow morning, 9 o'clock.

Court convenes at 9:00 A. M. next day as per recess taken yesterday. Jury all present.

By Mr. Duncan: Before the Court charges the jury we would like to introduce in evidence the census card of Charles Puller.

By Mr. Green: Objected to as incompetent, irrelevant and immaterial, all parties having rested.

By the Court: Objection overruled.

By Mr. Green: Defendants except.

360 *Chickasaw Roll (Not Including Freedmen.)*

Residence: Pontotoc County. Card No. —.

Post office: Stonewall, I. T. Chickasaw Nation. Field No. 152.

Dawes Roll No.	Name.	Relationship to person first named.	Age.	Sex.	Blood.
485. 1.	Puller, Charles		38	M.	Full
486. 2.	" Peter	Son	18	"	"
487. 3.	" Thomas	"	8	"	"
488. 4.	" Mike	"	7	"	"
489. 5.	" Nicey	Dau.	4	F.	"

Tribal enrollment.

Tribal enrollment of parents.

Year.	County.	Pages.	Name of father.	Year.	
1897.	Pontotoc	41	Puller	Dead	Chickasaw Roll
1897.	"	41	No. 1		
1897.	"	41	No. 1		
1897.	"	41	No. 1		
1897.	"	41	No. 1		

Name of mother.

Year.

Se-no-ho-ye	Dead	Chickasaw Roll
Lo-we-ney	"	Pontotoc
Bettie	"	"
"	"	"
"	"	"

No. 5 on Chickasaw Roll Naby.
Sept. 5/98.

361 Enrollment of Nos. 1, 2, 3, 4 and 5 hereon approved by
thr Secretary of Interior Dec. 12, 1902.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians, and the disposition of the land of said tribes and that the above and foregoing is a true and correct copy of Chickasaw Indian census card No. 152.

Muskogee, Okla., Feb. 21, 1911.

THOS. RYAN,
Acting Commissioner to the Five Civilized Tribes,
By O. W. BYRUM,
Chief Clerk.

The above and foregoing contains all the evidence offered introduced or submitted at the trial of said cause by the parties thereto.

362 STATE OF OKLAHOMA,
Pontotoc County, ss:

In the District Court.

No. 1015.

J. C. CHAPMAN, Plaintiff, -

vs.

DAVID ALBERSON et al., Defendants.

I, J. B. Gilbreath, Official Court Stenographer, in and for the Seventh Judicial District Court, in and for Pontotoc County, State of Oklahoma, do hereby certify that I was the Official Stenographer who took the testimony and all of the proceedings of the trial, in the above and foregoing trial, in shorthand, and I further certify that the above and foregoing is a full, true and correct transcript of my short hand notes taken in said cause, and filed in the office of the Clerk of the District Court of Pontotoc County, Oklahoma.

I further certify that the copies of the original exhibits introduced in evidence on the trial of said cause, contained in this record, are full, true and correct copies of the originals.

Witness my hand this the 28th day of February, 1914.

J. B. GILBREATH.

363 That thereafter and on the 13th day of November, 1913, there was filed in said cause requested instructions asked by the plaintiff, which are in words and figures as follows, to-wit:

364 In the District Court of Pontotoc County, Oklahoma.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

Special Charge Number One Asked by Plaintiff.

GENTLEMEN OF THE JURY: You are instructed that a marriage by contract or agreement, without the services of any person authorized by statute to join persons in marriage is valid between the parties competent to enter into the marriage relation, followed by co-habitation, and the issue of such a marriage would in law be legitimate.

WIMBISH & DUNCAN,
Attorneys for Plaintiff.

Refused because covered in charge. Plaintiff excepts. Exception allowed.

TOM D. McKEOWN,
District Judge.

365 In the District Court of Pontotoc County, Oklahoma.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

Special Charge Number Two Asked by Plaintiff.

GENTLEMEN OF THE JURY: You are instructed that marriage like any other fact may be proven by independent acts, facts and circumstances, and when the marriage relation is once established it is presumed to continue in the absence of proof that such marriage relation has been broken.

WIMBISH & DUNCAN,
Attorneys for Plaintiff.

Given:

Refused because covered in main charge. Plaintiff excepts. Exception allowed.

TOM D. McKEOWN,
District Judge.

366 In the District Court of Pontotoc County, Oklahoma.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

Special Charge Number Three Asked by Plaintiff.

GENTLEMEN OF THE JURY: You are instructed that if you believe from the evidence in this case that the deceased, Charles Puller and Louisa James were legally married, or that they agreed to be (become) same and live together as husband and wife, and that they, in either of the ways mentioned, entered into the marital relation of husband and wife and that the said John Alberston was a child of that union, begotten while said marital relation existed and continued, then I charge you that said child would be the legitimate child of said Charles Puller, deceased. And you will find for the plaintiff.

WIMBISH AND DUNCAN,
Attorneys for Plaintiff.

Refused because covered in charge. Plaintiff excepts. Exception allowed.

TOM D. McKEOWN,
District Judge.

367 In the District Court of Pontotoc County, Oklahoma.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

Special Charge Number Four Asked by Plaintiff.

GENTLEMEN OF THE JURY: I charge you that a valid marriage may be presumed to exist from general reputation among the acquaintances of the parties that such in the fact, when that reputation is accompanied by their co-habitation, and arises from their holding themselves out to the world as occupying that relation to which the law refers when marriage is mentioned.

WIMBISH & DUNCAN,
Attorneys for Plaintiff.

Refused because covered in charge. Plaintiff excepts. Exception allowed.

TOM D. McKEOWN,
District Judge.

Endorsed: No. 1015. Filed Nov. 13, 1913. A. D. Tanner, Dist. Clerk.

368 That thereafter and on the 13th day of November, 1913, there was filed in said cause defendant Lottie Carney's requested instruction No. 1 which is and was in words and figures as follows:

369 *Defendant Lottie Carney's Requested Instruction No. One (1).*

The Court instructs the jury that a Common law marriage exists when a man and a woman, capable of entering into a marriage contract, enter into an agreement to at once become husband and wife, and in pursuance of such agreement live together and co-habit as husband and wife, and hold each other out to the public as husband —.

Such agreement to become husband and wife may be expressed or implied;

An express agreement is where the parties thereto expressly agree;

An implied agreement is where the conduct of the parties with reference to the marriage is such as to induce the belief in your mind- that they intended to do that which their acts have indicated that they have done; that is, to take each other as man & wife.

It is essential to a common law marriage that there shall be a mutual agreement between the parties to assume toward each other the relation of husband and wife. Cohabitation without such an

agreement does not constitute marriage and an agreement to live together is not marriage, if there is no agreement to live as husband and wife.

J. C. CHAPMAN, Plaintiff,

VS.

DAVID ALBERSON et al.

Refused Because *d* covered in main charge. Def't Carney excepts. Exception allowed.

TOM D. McKEOWN,

Dist. Judge.

370 Endorsed: No. 1015. J. C. Chapman vs. David Alberson et al. Df. Carney Requested Ins. No. 2. Filed Nov. 13, 1913. A. D. Tanner, Clerk of District Court of Pontotoc Co., Oklahoma.

371 That thereafter and on the 13th day of November 1913, there was filed in said cause defendant Carney's requested instruction No. 2, which is and was in words and figures as follows, to-wit:

372 STATE OF OKLAHOMA,
 County of Pontotoc, ss:

In District Court.

J. C. CHAPMAN, Plaintiff,

VS.

DAVID ALBERSON et al., Defendants.

Defendant Lottie Carney's Requested Instruction No. Two (2).

The Court instructs the jury that under the laws and customs of the Chickasaw Indians a common law marriage is not recognized and a marriage entered into by and between members of said tribe of Indians without a compliance with their laws is void.

Refused. Dft. Carney excepts. Exception allowed.

TOM D. McKEOWN,

District Judge.

Endorsed: No. a264. J. C. Chapman vs. David Alberson et al. Defendant Lottie Carney's Requested Instruction No. 1. Filed Nov. 13, 1913. A. D. Tanner, Clerk of District Court of Pontotoc Co., Oklahoma.

373

Minutes Taken from Clerk's Journal.

No. 1015.

J. C. CHAPMAN

VS.

DAVID ALBERSON et al.

Nov. 12, 1913.

Trial proceeds. Nov. 13, 1913. Jury instructed and after argument retire.

374

That thereafter and on the 13th day of November, 1913, there was filed in said cause charge of the court, which is and was in words and figures as follows, to-wit:

375

STATE OF OKLAHOMA,
Pontotoc County, ss:

In the District Court.

No. 1015.

J. C. CHAPMAN, Plaintiff,

VS.

DAVID ALBERSON et al., Defendants.

Charge of the Court.

GENTLEMEN OF THE JURY: This is an action commenced by J. C. Chapman, hereinafter called plaintiff, against David Alberson, Sina Alberson, and Salina Alberson, Lottie Carney and Tom Pendleton, hereinafter called defendants; for possession of a certain parcel of land described in the petition, and asking that title be quieted to the same as against the defendant.

It is admitted in this case that the land in controversy was duly allotted to John Alberson, deceased, as his portion of the lands of the Chickasaw tribe, and that he died intestate in Pontotoc County, Oklahoma, without having been married, and without children surviving him.

376

Plaintiff alleges that John Alberson was the child of Charles Puller and Louisa James and was born to them as a result of their living together in pursuance of an agreement of marriage by which they mutually agreed to become husband and wife, and did in pursuance of said agreement live and co-habit together as husband and wife, and that said marriage contract was a common law marriage contract, and continued for a period of about

two years, and that the said John Alberson was the legitimate son of Charles Puller and Louisa James; and that Charles Puller inherited the land in controversy on the death of the said John Alberson, and that he sold the same to the plaintiff herein by warranty deed duly approved by the County Court of Pontotoc County.

Plaintiff alleges that he is the owner of and entitled to the immediate possession of the lands described in his petition.

The defendants, David Alberson, Sina Alberson and Salina Alberson deny the allegations of the plaintiff's petition, except those they specially admit.

The defendants, David, Sina and Salina Alberson specifically deny that Charles Puller inherited the lands allotted to John Alberson, and that Charles Puller was the father of John Alberson, and specifically deny that the plaintiff is entitled to the immediate possession of the lands in controversy or any portion thereof.

The defendants, David, Sina and Salina Alberson for their cross petition against the plaintiff and the defendants Lottie Carney and Tom Pendleton allege that they are the sole owners of the legal and equitable estate in and to the allotment of John Alberson, and that they are entitled to the immediate possession of the land in controversy.

That the defendants, David, Sina and Salina Alberson allege that they are the next of kin and heirs at law of the said John Alberson, and that the said John Alberson was the son of Robert Alberson, who was their father, and that John Alberson was the legitimate child of Robert Alberson and Louisa James, as a result of a marriage contract entered into between Robert Alberson and Louisa James, and that the said John Alberson was recognized and acknowledged by Robert Alberson as his son.

That the defendants David, Sina and Salina Alberson say that since the filing of this suit that they have reached their majority and ask that they be decreed the sole owners of said land; and that the claims of the plaintiff and the defendants Lottie Carney and Tom Pendleton be determined and cancelled as clouds upon their title.

The defendants Lottie Carney for her answer to the petition of the plaintiff, J. C. Chapman, denies that John Alberson was the legitimate son of Charles Puller, and denies that Charles Puller and Louisa James were ever married under any form or custom, or were ever married at all.

378 The defendant Lottie Carney says that Charley Puller, at the time of the birth of John Alberson and for several years prior and subsequent thereto had a living wife with whom he lived and co-habited, and denies that he had any interest in the lands of John Alberson deceased, and says that John Alberson was born out of lawful wed-lock and that he was never acknowledged or adopted by any other person but his mother.

The defendant Lottie Carney alleges that she is the only heir to John Alberson, deceased, being the surviving sister of John Alberson's mother, and that she is entitled to be decreed the owner of said land in controversy, and that the claims of the plaintiff be declared null and void and cancelled.

The defendant Lottie Carney for her answer to the cross petition of the defendants David, Sina and Salina Alberson denies that Ro'ert Alberson was the father of John Alberson, and that David, Sina and Salina Alberson are the next of kin and heirs of John Alberson, or have any interest in the land in controversy.

The defendant Lottie Carney says that John Alberson was born out of lawful wed-lock and that his mother was never married to any person, and asks that she be decreed the owner and entitled to the immediate possession of the land in controversy, and that the claim of the said defendants, David, Sina and Salina Alberson be cancelled as against her.

379 The defendants Tom Pendleton and L. M. Chandler for their answer say that they admit that Tom Pendleton was and is in actual possession of said premises in controversy, and say they disclaim any interest in the title to the said premises but allege that they hold the same under any by virtue of certain lease contracts made and executed by John Alberson in his life time, and say that they are entitled to the possession of said premises under said lease contract according to the terms and tenor thereof, and ask that they be adjudged to hold possession of the same until the expiration of said lease contracts.

The plaintiff and defendants file general denials by way of reply to the respective answers and cross petitions of the defendants.

No. 1.

The burden is upon the plaintiff, John C. Chapman to establish by a fair preponderance of the evidence the material allegations of his petition before you can find in favor of the plaintiff and against the defendants.

By agreement of all parties the rights of Tom Pendleton and L. R. Chandler are reserved to the Court.

380

No. 2.

The Court instructs the jury that a common law marriage was valid in the Indian Territory, even though the contracting parties did not follow the provisions of the Indian law, even though said Indian law fixed a punishment for the failure of the parties to follow such Indian Statute.

D't Lottie Carney excepts. Exceptions allowed.

TOM D. McKEOWN,
Dist. Judge.

No. 3.

The Court instructs the jury that a Common Law marriage exists when a man and woman, capable of entering into a marriage contract, enter into an agreement to at once become husband and wife, and in pursuance of such agreement live together and co-habit as

husband and wife, and hold each other out to the public as husband and wife.

Such agreement to become husband and wife may be expressed or implied;

An expressed agreement is where the parties thereto expressly agree;

An implied agreement is where the conduct of the parties with reference to the marriage is such as to induce the belief that they intended to do that which their acts have indicated that they have done;

And the issue born of such marriage is legitimate.

D'it Lottie Carney excepts, exception allowed.

T. D. McKEOWN, *Judge*.

No. 4.

381 The Court instructs the jury that if you believe from a fair preponderance of the evidence that Charles Puller and Louisa James agreed to live together as husband and wife, and that at the time they entered in said agreement that Charles Puller's first wife, Louina, was dead, and that the said Charles Puller and Louisa James lived together and co-habited as husband and wife, and held themselves out to the public as husband and wife, and that the said John Alberson was born as a result of said relation, then you are instructed that the said John Alberson would be a legitimate child of the said Charles Puller and your verdict should be for the plaintiff for possession of the land described in plaintiff's petition.

No. 5.

The Court instructs the jury that before persons can enter into a Common Law marriage contract, or enter into a marriage contract according to a custom, it must be shown by a fair preponderance of the evidence that neither person to said contract was under any disability at the time said contract was entered into, and the existence of a former wife still living would prohibit another marriage at common law or by custom, and before the plaintiff can recover in this case you must find that at the time of the alleged agreement to live together as man and wife, that Charles Puller had no other wife at the time they went together under such agreement, if any.

382

No. 6.

The Court instructs the jury that if you believe from a fair preponderance of the evidence that the said Robert Alberson lived with Louisa James as husband and wife, that each held the other out in the community where they resided as such, that during such marriage state they co-habited as man and wife that from the acts and utterances of the said parties through their recognition and acknowledgment of each other as husband and wife from which it was gen-

erally believed in said community, that they were husband and wife, then if you believe from the evidence in the case that by reason of said marriage and co-habitation during said marriage period John Allerson was born, then the said David, Sina and Salina Alberson would be the legal heirs of the estate of John Alberson, deceased, and you should find for the defendants David Alberson, Sina and Salina Alberson for possession of said land described in plaintiff's petition, upon their cross action.

No. 7.

The Court instructs the jury that if you believe from the evidence that Louisa James did not enter into a Common Law marriage with Charles Puller or Robert Alberson, and that said John Alberson was an illegitimate child, then you should find for the defendant Lottie Carney for possession of the land mentioned in plaintiff's petition.

383

No. 8.

You are the sole judges of the credibility of the witnesses, and the weight and value to be given to their testimony, but the law of the case you must receive from the charge of the Court and be governed thereby.

No. 9.

You are further instructed that you must consider these instructions al- together. You have no right to consider any part or parts of the same to the exclusion of other portions thereof.

No. 10.

Under the law, nine or more of your number concurring may find a verdict, and in the event that you do not arrive at a unanimous verdict and nine or more of your number, less than all, find a verdict, it will be necessary for all of you concurring in the verdict to sign the verdict before returning it into Court. If all of you agree it is sufficient for the verdict to be signed by your foreman; and that you must not arrive at your verdict by casting lots, or in any manner which is a species of chance. You must be controlled alone in arriving at your verdict by the law as stated in these instructions and the evidence adduced in the trial.

No. 12.

After argument of counsel forms of verdicts will be handed you by the Court.

TOM D. McKEOWN,
District Judge.

384 Endorsement of charge of the court: No. 1015. J. C. Chapman vs. David Alberson et al. Charge of the Court. Filed Nov. 13th, 1913. A. D. Tanner, Dist. Clerk.

385 That thereafter and on the 13th day of November, 1913, there was filed in said cause verdict of the jury which is and was in words and figures as follows, to-wit:

386 *Verdict—Civil.*

STATE OF OKLAHOMA,
Pontotoc County, ss:

In District Court.

No. 1015.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

We, the jury drawn, impaneled and sworn in the above entitled cause, do upon our oaths find for the plaintiff J. C. Chapman for the possession of N. E. $\frac{1}{4}$; and the N. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of section 6; and S. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of Section 28 all in Township 3 North Range 7 East being the entire allotment of John Alberson deceased, A. W. McKeel, Jonas Milner, Ben Bradford, S. E. Crossen, John Ward, J. H. Wedlock, J. E. Kinsey, A. K. Ellard, G. W. Fullingim, M. D. Fine.

— — —, *Foreman.*

Endorsement of Verdict—Civil: No. 1015. Verdict—Civil. J. C. Chapman vs. David Alberson et al. Filed Nov. 13th, 1913. A. D. Tanner, Dist. Clerk.

387 That thereafter and on the 15th day of November 1913, there was filed in said cause defendant's motion for new trial which is and was in words and figures as follows, to-wit:

388 STATE OF OKLAHOMA,
 County of Pontotoc, ss:

In District Court.

J. C. CHAPMAN, Plaintiff,

VS.

DAVID ALBERSON et al., Defendants.

Defendants' Motion for New Trial.

Comes now David Alberson, Sina Alberson, Salina Alberson, Lottie Carney, Tom Pendleton and L. M. Chandler, defendants above named, and moves the Court to vacate and set aside the verdict and judgment rendered herein on the 15th day of Nov., 1913, and to grant a new trial for the following causes which affect materially the substantial rights of said defendants.

I.

Irregularity in the proceedings of the Court and jury by which the defendants were prevented from having a fair trial.

II.

Missconduct of the Jury.

III.

Accident and surprise, which ordinary prudence could not have guarded against.

IV.

Excessive damages appearing to have been given under the influence of passion or prejudice.

V.

That the verdict is not sustained by sufficient evidence and is contrary to law.

VI.

389 Newly discovered evidence, material for the defendants, which they could not, with reasonable diligence, have discovered and produced at the trial.

VIII.

Error of law occurring at the trial and duly excepted to at the time by said defendants.

VIII.

Error of the Court in refusing the peremptory instruction requested by the defendants.

IX.

Error of the Court in giving instruction- Nos. 2 & 3.

X.

Error of the Court in refusing to give requested instruction- Numbers One and Two offered by defendant Lottie Carney.

XI.

Error of the Court in admitting incompetent, irrelevant and *incompetant* testimony offered by plaintiff and excluding competent, relevant and material testimony offered on the part of defendants, all of which was duly excepted to at the time by said defendants.

XII.

Error of the Court in overruling defendant Lottie Carney's challenge to August Fischback and O. E. Rector & Ellard to act as jurors in said cause upon the ground of their bias in favor of said plaintiff.

In support whereof said defendants submit herewith the affidavit of ——— hereto attached and made a part of this motion.

Wherefore the judgment of the Court is prayed sustaining this motion and that the said defendants be granted a new trial in said cause.

C. F. GREEN,
CRAWFORD & BOLEN,
C. E. B. CUTLER,
Attorneys for Defendants Named.

Endorsed: No. 1015. J. C. Chapman, vs. David Alberson et al. Defendants' Motion for New Trial. Filed Nov. 15, 1913. A. D. Tanner, Clerk of District Court of Pontotoc Co., Oklahoma.

391 That thereafter and on the 2nd day of January, 1914, there was filed in said cause findings of fact reserved to the court, which is and was in words and figures as follows, to-wit:

392 STATE OF OKLAHOMA,
Pontotoc County, ss:

In the District Court.

No. 1015.

J. C. CHAPMAN, Plaintiff,

vs.

ALBERSON MINORS et al., Defendants.

Now on this 2nd day of January, 1914, being one of the regular days of the November, 1913, Term of the District Court, came on for hearing in case No. 1015, J. C. Chapman vs. David Alberson et al., the question heretofore reserved to the Court by agreement of Counsel on both sides, to-wit: the validity and the rights of the parties under the lease contracts heretofore introduced in evidence, executed by John Alberson to L. M. Chandler, and assigns to Tom Pendleton;

After hearing the argument of counsel and the evidence, the Court finds that the lease contract on the homestead expired on the first day of January, 1913, and that the rental value of said land for said year was \$117.18; and that the lease contract on the surplus land will expire on the 31st day of December, 1915; that the reasonable rental value of said land for the year 1913, as fixed by the contract is \$25.00; and that the said Tom Pendleton have possession of the surplus land for the years 1914 and 1915 upon his compliance with the terms of his contract.

TOM D. McKEOWN,
District Judge.

Endorsed: Filed Jan. 2nd, 1914. A. D. Tanner, District Clerk.

393 *Minutes Taken from Clerk's Journal.*

No. 1015.

J. C. CHAPMAN

vs.

DAVID ALBERSON et al.

Jan. 2nd, 1914.

Motion for New Trial, overruled. Defendants except. Judgment as per journal entry. Defendants pray an appeal to the Supreme Court and granted 90 days to prepare and serve case-made. Plaintiff allowed 10 days thereafter to suggest amendments. Case to be settled upon 5 days' notice by either party.

Alleal bond fixed in sum of \$1,000.00 to be made in 15 days. Exception stayed pending granting bond.

394 That thereafter and on the 3rd day of January, 1914, there
was filed in said cause a journal entry, which is and was in
words and figures as follows, to-wit:

395 In the District Court of Pontotoc County, Okiahoma.

No. 1015.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

Journal Entry.

Now on this the 11th day of November, 1913, the same being one
of the regular days of the November, 1913, term of said court, this
cause came on for trial, and the plaintiff J. C. Chapman, appeared
in person and by his attorneys, Wimbish & Duncan, and the defend-
ants, David Alberson, Sina Alberson, Salina Alberson, Willie Mon-
roe, Guardian and Tom Jones, Guardian, appeared by their attorney,
C. E. B. Cutler, and the defendants Tom Pendleton, L. M. Chandler
and Lottie Carney, appeared in person and by their attorneys, C. F.
Green and Bolen & Crawford, and it was agreed that the question of
the rights of Tom Pendleton be reserved to the Court, and a jury hav-
ing been demanded to try the issues between the plaintiff and ali the
other defendants, whereupon a jury of twelve good and lawful men
were duly summoned, empaneled and sworn to try the issues in this
cause, and at all times the court and all the parties being present on
the 11th 12th & 13th days of November, 1913, and the jury having
heard the evidence, the charge of the court, and argument of counsel
did on the 13th day of November, 1913 under the direction of the
court retire in charge of a sworn bailiff to consider their verdict, and
after due deliberation returned into court the following verdict:

396 "Verdict—Civil.

STATE OF OKLAHOMA,
Pontotoc County, ss:

In County Court.

No. 1015.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendant-.

We, the jury drawn, impaneled and sworn in the above entitled
cause, do upon our oaths find for the plaintiff, J. C. Chapman, for

the possession of N. E. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Section 6, and the S. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of Section 28, all in Township 3 North, Range 7 East, being the entire allotment of John Alberson, deceased.

A. W. McKEEL.
JONAS MINNE.
BEN BRADFORD.
S. E. CROSSEN.
JOHN WARD.
J. H. MEDLOCK.
J. E. KINSEY.
A. K. ELLERD.
J. W. FULLINGIM.
M. D. FINE.

Endorsed: No. 1015. Verdict—Civil. J. C. Chapman vs. David Alberson et al. Filed Nov. 13th, 1913. A. D. Tanner, Dist. Clerk.

After filing said verdict, the court continued the hearing as to the rights of Tom Pendleton until the second day of January, 1914.

Now on this 2nd day of January, 1914, being one of the regular days of the November 1913 term of the District Court, and all parties being present by their attorneys, came on for hearing in cause No. 1015, J. C. Chapman vs. David Alberson et al. the question heretofore reserved to the Court by agreement of counsel on both sides, to-wit: validity and the rights of the parties under the lease contracts heretofore introduced in evidence, and executed by John Alberson to

L. M. Chandler and assigned to Tom Pendleton;

397 After hearing the argument of counsel and the evidence the

Court finds that the lease contract on the homestead expired on the first day of January, 1913, and that the rental value of said land for said year was \$117.28, and that the lease contract on the surplus land will expire on the 31st day of December, 1915, and that the reasonable rental value of same for the year 1913, as fixed by the contract is \$25.00, and that said Tom Pendleton have possession of the surplus land for the years 1914 and 1915 upon his compliance with the terms of his contract.

And the court further finds that since the filing of this suit that the defendants, David Alberson, Sina Alberson and Salina Alberson, have reached their majority, and have filed answer in their own proper persons.

It is therefore ordered, adjudged and decreed by the court that this cause be, and the same is hereby dismissed as to Willie Monroe and Tom Jones former guardians of said minors.

It is further ordered, adjudged and decreed by the court that the defendants, David Alberson, Sina Alberson and Salina Alberson take nothing by reason of their cross petition filed herein.

It is further ordered, adjudged and decreed by the Court, that the plaintiff J. C. Chapman, do have and recover of and from the defendants, Lottie Carney, David Alberson, Sina Alberson and Salina Alberson, the right, title and interest and possession in and to the

following described lands situated in Pontotoc County, Oklahoma to-wit:

Northeast Quarter and the Northeast Quarter of the Northeast Quarter of the Southeast Quarter of Section Six (6), and the Southwest Quarter of the Southwest Quarter of Section twenty-eight (28), all in Township Three (3) North, Range Seven (7) East, being the entire allotment of John Alberson, deceased; together with all costs in this behalf expended, and that he have execution against said parties for such costs and for possession of said premises.

It is further ordered, adjudged and decreed by the court, that said defendants, Lottie Carney, David Alberson, Sina Alberson and Salina Alberson, and those claiming through, by or under them, be and they — hereby perpetually enjoined and forbidden to claim any right, title, or estate in and to said premises, adverse to the possession and title of said plaintiff herein, and the said defendants, and any of them, and those claiming by, through or under them are hereby perpetually forbidden and enjoined from commencing any suit to disturb said plaintiff in his possession and title to said premises, from setting up any claim or interest adverse to the title of plaintiff herein, and from disturbing plaintiff in his peaceable and quiet enjoyment of said premises.

It is further ordered, adjudged and decreed by the court, that the plaintiff J. C. Chapman, do have and recover of and from the defendant, Tom Pendleton the sum of \$148.18 and interest thereon from this date at the rate of six per cent per annum, together with all costs, for which let execution issue.

The Court further finds that all the rights heretofore claimed by L. M. Chandler have been assigned to Tom Pendleton.

It is therefore ordered, adjudged and decreed by the court, that this cause be and the same is hereby dismissed as to the said L. M. Chandler.

It is further ordered, adjudged and decreed by the court, that the lease contract of the said Tom Pendleton upon the following described lands situated in Pontotoc County, Oklahoma, to-wit:

Northwest Quarter of the Northeast Quarter, and the West Half of the Southwest Quarter of the Northeast Quarter of Section Six (6), and the Southwest Quarter of the Southwest Quarter of Section Twenty-eight (28), all in Township Three (3) North, Range Seven (7) East; be and the same is hereby declared to be valid and subsisting, and that the said Tom Pendleton is entitled to the possession of said lands for and during the period ending December 31st, 1915, and the judgment heretofore rendered in favor of said J. C. Chapman, for the last described lands is hereby declared to be subject to the rights of the said Tom Pendleton for the years of 1914 and 1915 upon his complying with the terms and conditions of said contract; that is upon his paying to J. C. Chapman the sum of \$25.00 on the first day of January, 1914, and \$25.00 on the first day of January, 1915.

Done this the 2nd day of January, 1914.

TOM D. McKEOWN, Judge.

Endorsed: No. 1015. J. C. Chapman, Plaintiff, vs. David Alber-
son et al., Defendants Journal Entry. Filed Jan'y 3rd, 1914. A.
D. Tanner, Dist. Clerk.

400 That thereafter and on the 14th day of January, 1914,
there was filed in said cause order overruling defendants' mo-
tion for new trial, which is and was in words and figures as follows,
to-wit:

401 STATE OF OKLAHOMA,
County of Pontotoc, ss:

In District Court.

Number 1015.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

Order Overruling Defendants' Motion for New Trial.

Now on this 2nd, day of January, 1914, the same being one of the
regular judicial days of the Nov., 1913, term of said Court, the above
entitled cause comes on for hearing; the plaintiff and defendants
each appearing by their respective counsels, and the Court after hear-
ing arguments in support of a new trial on the part of the said de-
fendants, and on due consideration thereof, is of opinion that the
motion for new trial in said cause should be overruled and the prayer
denied.

It is, therefore, ordered, adjudged and decreed by the court, that
the motion for new trial filed in said cause by the said defendants be,
and the same is hereby denied. To which action of the Court the de-
fendants by their respective counsels did then and there except, and
prays an appeal to the Supreme Court of the State of Oklahoma;
that the said exceptions to the action of the Court and the appeal to
the Supreme Court of Oklahoma is by the Court allowed.

Whereupon on motion of the defendants and for good cause shown,
the said defendants are allowed 90 days from the date hereof to make
and serve case-made for appeal to the Supreme Court of Okla-
402 homa, and the plaintiff is granted 10 days thereafter to sug-
gest amendments thereto, said case-made to be settled upon 5
days' notice by either party thereafter.

And it is further ordered, that supersedeas bond in the sum of one
thousand dollars (\$1000.00) be filed herein within 15 days from this
date.

It is further ordered by the Court, that upon the filing and approval
of the said supersedeas bond as above provided, that the defendant
Lottie Carney be entitled to the possession of the said described real
estate the subject of this action until a final hearing can be had on

appeal to the Supreme Court of the State of Oklahoma, and that said supersedeas bond is for the purpose of staying an execution on the part of the said plaintiff for the possession of said property.

TOM D. McKEOWN,

District Judge.

Endorsed: No. 1015. J. C. Chapman, Plaintiff, vs. David Alberson et al., Defendants. J. 5/202. Order. Overruling Defendants' Motion for New Trial. Filed Jan'y 14, 1914. A. D. Tanner, Dist. Clerk. Taxed.

403 That thereafter and on the 14th day of January, 1914, there was filed in said cause supersedeas bond which is and was in words and figures as follows, to-wit:

404 STATE OF OKLAHOMA,
Pontotoc County:

In District Court.

No. 1015.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

Know all man by these presents, That we, Lottie Carney as Principal, and Jim Carney, R. P Ford, Etta Hays and Daniels Hays as Sureties are held and firmly bound unto J. C. Chapman, David Alberson Sina Alberson Salina Alberson, Tom Pendleton, and L. M. Chandler in the penal sum of One Thousand and No/100 Dollars, for the payment of which sum, well and truly to be made, we do bind ourselves and each of us, our heirs, executors and administrators, jointly and severally by these presents.

The condition of the above obligation is such that whereas, in the District Court of Pontotoc County, Okla. in the above entitled cause, on the 13th day of November 1913 it was ordered, adjudged and decreed by the Court that J. C. Chapman do have and recover of and from defendants Lottie Carney David Alberson, Sina Alberson and Salina Alberson the right title and interest and possession in and to the following described real estate situate in Pontotoc County Oklahoma to wit:

The N. E. $\frac{1}{4}$ & the N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Section 6 and the S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Section 28 all in township 3 north Range 7 East being entire allotment of John Alberson deceased, and situated in Pontotoc County, Okla. together with all costs in his behalf expended and that he have execution against said parties for such costs and for possession of said premises, and
405 whereas, the above named Principal has appealed from said judgment to the Supreme Court of said State, and gives this

undertaking in order that execution of said judgment shall be stayed pending the determination of said cause on appeal. Now, therefore, if said above named Principals shall abide the Judgment of the Court in said cause in case said judgment appealed from shall be affirmed in whole or in part, and not during his possession of said property pending a determination of said cause on appeal commit or suffer to be committed any waste thereon, and if judgment be affirmed, shall pay the value and use of the occupation of said property from the date of this undertaking until the delivery of possession thereof pursuant to said judgment and all costs then this obligation shall be void, otherwise to remain in full force and effect.

In Witness Whereof, we have hereunto subscribed our names, this 13 day of January 1914.

LOTTIE CARNEY.
JIM CARNEY.
R. P. FORD.
ETTER HAYES.
DANIEL HAYES.

Witness:-

JIM CARNEY.
R. P. FORD.

STATE OF OKLAHOMA,
Pontotoc County:

The undersigned, Sureties on the foregoing Bond, being duly sworn on oath each for himself says; I am a resident householder and freeholder within the State of Oklahoma, and have property within said State worth over and above all my just debts and liabilities exclusive of property exempt from execution the sum set
406 out and stated below that is to say:

I, Jim Carney am worth the sum of \$1,000.00.
I, R. P. Ford am worth the sum of \$2,500.00.
I, Etter Hays am worth the sum of \$1,500.00.
I, Daniel Hays am worth the sum of \$—.

[SEAL.]

JIM CARNEY.
R. P. FORD.
ETTER HAYS.
DANIEL HAYS.

Subscribed and sworn to before me, this 14th day of January 1914.

A. H. CONSTANT,
Notary Public.

My Commission Exp. 3/30/1916.

The foregoing bond approved this 14th day of January 1914.

A. D. TANNER,
Dist. Clerk.

Conditions of Appeal Bond.

When judgment is for recovery of money insert after shall, "pay the condemnation money and costs, in case said judgment appealed from shall be affirmed in whole or in part."

When it directs execution of conveyance or other instrument, insert: "abide the judgment of the court in said cause, in case said judgment appealed from shall be affirmed in whole or in part, and shall pay all costs."

When it directs the sale or delivery of possession of real property, insert: If for sale, "not, during his possession of said property
407 pending a determination of said cause on appeal, commit or suffer to be committed, any waste thereon, and if the judgment be affirmed, shall pay the value of the use and occupation of said property from the date of this undertaking until delivery of possession thereof pursuant to such judgment, and shall pay all costs," and if judgment is for the sale of property on mortgage and for the payment of a deficiency arising from the sale insert further, "and shall pay any deficiency of such judgment remaining after the sale of said property."

When it directs assignment or delivery of documents insert; "if said judgment be affirmed, abide said judgment and pay all costs."

Endorsed: No. 1015. In District Court. Supersedeas Bond. J. C. Chapman, Plaintiff, vs. David Alberson et al., Defendant-. Filed January 14th, 1914. A. D. Tanner, Clerk.

408 The above and foregoing sets out fully and correctly all pleadings filed in said cause, all motions filed or made, and all rulings and orders made thereon; all exceptions taken by the defendants to such rulings and orders, exceptions by the plaintiff; all the evidence offered, introduced or received upon the trial; all the instructions given to the jury, as well as those asked by the plaintiff, and as well as those asked by the defendants, and refused by the Court; the verdict of the jury, and the judgment of the Court thereon, and the exceptions of the defendants thereto, and the same is true and correct statement and complete transcript of all the pleadings, motions, evidence, findings, judgments and proceedings in said cause

409 In the District Court, Seventh Judicial District Court, Pontotoc County, State of Oklahoma.

No. 1015.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON, SINA ALBERSON, and SALAINA ALBERSON, Minors,
by C. E. B. Cutler, Their Guardian ad Litem; Lottie Carney and
Tom Pendleton et al., Defendants.

To the above-named Plaintiff J. C. Chapman and His Attorneys of
Record Wimbish & Duncan, and to the Defendants David Alber-
son, Sina Alberson, and Salina Alberson and their Attorney of
Record C. E. B. Cutler, and to Defendants Tom Pendleton and
L. M. Chandler:

The above and foregoing case-made is hereby tendered to and
served upon you and each of you as a true and correct case-made
of the above entitled cause, and as a true and correct statement and
complete transcript of all pleadings, motions, orders, evidence, find-
ings, judgments and proceedings in the above entitled cause, this
11th day of March 1914.

_____,
Attorney for the Defendant Lottie Carney.

C. F. GREEN,
BOLEN & CRAWFORD,
Attorneys for Lottie Carney.

We hereby accept and acknowledge due, legal and timely service
of the above and foregoing case-made on us this 11th day of March
1914.

C. E. B. CUTLER,
Attorney for David, Sina and Salina Alberson.

WIMBISH & DUNCAN,
Attorneys for J. C. Chapman, Plaintiff.

L. M. CHANDLER,
One Defendant.

TOM PENDLETON,
One Defendant.

110 In the District Court, Seventh Judicial District Court, Pontotoc County, State of Oklahoma.

No. 1015.

JOHN C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON, SINA ALBERSON, and SALINA ALBERSON, Minors,
by C. E. B. Cutler, Their Guardian ad Litem; Lottie Carney, Tom
Pendleton, and L. M. Chandler, Defendants.

Waiver.

This is to certify that we, the undersigned, Wimbish and Duncan, Attorneys for the plaintiff J. C. Chapman; and C. E. B. Cutler, attorney for David Alberson, Sina Alberson and Salina Alberson, and Tom Pendleton and L. M. Chandler for themselves, have examined the foregoing case-made and find the same true and correct in all particulars, and have no amendments to suggest, and waive the time allowed by the Court in which to suggest amendments to same, and consent that the case-made as heretofore set out may be signed, sealed, settled, certified and allowed by the Court, as in all respects, full, true and correct.

We hereby further expressly waive the issuing and service of summons in Error out of the Supreme Court, and hereby enter out appearances as defendants In Error, upon the appeal of the above entitled cause to the Supreme Court of Oklahoma.

Dated this 11 day of March, 1914.

C. E. B. CUTLER,
*Attorney for Defendants David Alberson,
Sina Alberson, and Salina Alberson.*
WIMBISH & DUNCAN,
Attorneys for Plaintiff.
TOM PENDLETON,
One Defendant.
L. M. CHANDLER,
One Defendant.

Filed May 12, 1914. W. H. L. Campbell, Clerk.

111 In the District Court, Seventh Judicial District Court, Pontotoc County, State of Oklahoma.

No. 1015.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON, SINA ALBERSON, and SALINA ALBERSON; LOTTIE
CARNEY, and TOM PENDLETON and L. M. CHANDLER, Defendants.

Waiver.

We, the undersigned attorneys of record for the above named plaintiff, and I, attorney for the above named defendants David,

Sina and Salina Alberson, and we Tom Pendleton and L. M. Chandler, co-defendants, for ourselves, do hereby waive notice to us of the time and place of the presentation of the above and foregoing case-made to the Judge of said District Court, before whom said cause was tried, for settlement and signing, and hereby agree that said case-made may be presented to the said Judge for settlement and signing and be settled, signed and allowed by said Judge at any time when it may suit his convenience to do so.

C. E. B. CUTLER,

*Attorney for Defendants David, Sina
and Salina Alberson.*

WIMBISH & DUNCAN,

Attorneys for Plaintiff.

L. M. CHANDLER,

Codefendant.

TOM PENDLETON,

Codefendant.

412 STATE OF OKLAHOMA,
County of Pontotoc, ss:

In District Court.

Number 1015.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

I, A. D. Tanner, Clerk of the District Court for Pontotoc County, and State of Oklahoma, do hereby certify that the foregoing is a full, true and correct transcript of the record in the above entitled cause, and that the case-made attached hereto is the original case-made in said cause.

In witness whereof, I have hereunto set my hand and seal of said Court, this 4th day of May, A. D. 1914.

[SEAL.]

A. D. TANNER,

*Clerk of the District Court,
Pontotoc County, Oklahoma.*

413 In the District Court, Seventh Judicial District Court, Pontotoc County, State of Oklahoma.

No. 1015.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON, SINA ALBERSON, and SALINA ALBERSON; LOTTIE CARNEY, and TOM PENDLETON and L. M. CHANDLER, Defendants.

Trial Judge's Certificate.

I, the undersigned Judge of the District Court, Seventh Judicial District Court, Pontotoc County, State of Oklahoma, before whom

said cause was tried, hereby certify that the foregoing was presented to me at the Court-house in the City of Ada in the County of Pontotoc in the State of Oklahoma, as the case-made herein, as required by law, by the parties to said cause, and it appearing to me that the said case-made has been duly made and served upon the plaintiff and co-defendants of the defendant appealing, within the time fixed by the orders of this Court, and in the manner and form provided by law, the said defendant Lottie Carney, *attorney* by her attorney C. F. Green, and the said plaintiff, nor the defendants David, Sina and Salina Alberson, nor the defendants Tom Pendleton and L. M. Chandler, not appearing either in person or by their attorneys, and the said case-made having been examined by me, is true and correct, and contains a true and correct statement and complete transcript of all pleadings, motions, orders, evidence, findings, judgments, and proceedings in said cause, and the plaintiff

J. C. Chapman, and defendants Salina, David and Sina Alberson, and Tom Pendleton, by their attorneys and for themselves, having certified in writing that the foregoing case-made is a true and correct case-made in all particulars, and that they have no amendments to suggest and waive the time allowed by the Court within which to suggest amendments and waive notice of the time and place of presentation of the said case-made to the Judge of the said Court who tried the case for settlement and signing, and consent that the said case-made as hereinbefore set out may be signed, settled, certified and allowed by the Court as in all respects full, true and correct, I hereby certify, sign and settle the case as a true and correct case-made in said cause, and direct that it be attested and filed by the Clerk of said Court.

And it is also ordered that the defendant Lottie Carney may withdraw the case-made from the files for the purpose of attaching it to his petition In Error to be filed in the Supreme Court.

Witness my hand at Ada in Pontotoc County, Oklahoma, this 2nd day of May, 1914.

TOM D. McKEOWN,

District Judge, Seventh Judicial District Court, State of Oklahoma.

Attest:

[SEAL.] A. D. TANNER,

Clerk of the District Court of Pontotoc County, Oklahoma.

415 STATE OF OKLAHOMA,
County of Pontotoc, ss:

In District Court.

Number 1015.

J. C. CHAPMAN, Plaintiff,

vs.

DAVID ALBERSON et al., Defendants.

I, A. D. Tanner, Clerk of the District Court of Pontotoc County, and State of Oklahoma, do hereby certify that the foregoing Case-

Made is the original case-made in said cause and that said original case-made was filed with the papers in the case in the office of the District Clerk of said County and State, on the 4th day of May A. D., 1914.

Witness my hand and the seal of said court this, 4th day of May A. D., 1914.

[SEAL.]

A. D. TANNER,
*Clerk of the District Court,
Pontotoc County, Oklahoma.*

416 STATE OF OKLAHOMA:

In the Supreme Court.

Number 6392.

LOTTIE CARNEY, Plaintiff in Error,

vs.

J. C. CHAPMAN et al., Defendant- in Error.

Stipulations.

It is hereby stipulated and agreed by and between the parties to this action, in the Supreme Court of the State of Oklahoma, through their respective counsels, that: the original case-made herein may be corrected to show that the two jurors, to wit: August Fishbeck and C. B. Rector, did not serve upon the jury that tried said cause, in the District Court of Pontotoc County, Oklahoma, the trial Court below, and that the defendant Lottie Carney and who is now plaintiff in error challenged said jurors peremptory and in doing so ex-austed her two peremptory challenges given her by the Statutes in order to remove said two alleged biased jurors from the pannel.

C. F. GREEN,

J. W. BOLEN,

*Attorneys for Lottie Carney, Tom Pendleton
and L. M. Chandler.*

WIMBISH & DUNCAN,

Attorneys for J. C. Chapman.

C. E. B. CUTLER,

Attorney for the Alberson Defendants.

Endorsed on the back: Filed in the Office of the Court Clerk of Pontotoc County, Oklahoma, on the 8th day of November, 1915. A. D. Tanner, Court Clerk, by A. R. Sugg, Deputy. Filed for record 11/8/15.

417 In the Supreme Court, State of Oklahoma.
Number 6392.

LOTTIE CARNEY, Plaintiff in Error,

vs.

J. C. CHAPMAN et al., Defendants in Error.

The matter of correcting the original case-made in this cause having been submitted to the undersigned Judge of the District Court of Pontotoc County, Oklahoma, and for the purpose of having same corrected under the supervision of the trial Judge, is now before said trial judge for correction in accordance with the motion filed herein by the plaintiff in error Lottie Carney, and the matter having been submitted to the Court, the Court finds: that the parties to this action have through their respective counsels, stipulated in writing, which is filed herewith, that the said case-made be corrected as per the motion filed as aforesaid, and said stipulations appearing to be fair and satisfactory to all the persons concerned, the court is of opinion that same should be incorporated into said case-made.

It is, therefore, the Order of the Court, that the stipulations filed herein by the respective parties to this action, be, and *rae* hereby incorporated into the original case-made herein and made a part of same.

TOM D. McKEOWN,

District Judge, Pontotoc County, Oklahoma.

Attest:

[SEAL.] A. D. TANNER,

Court Clerk, Pontotoc County, Okla.

Filed for record 11/8/15.

Endorsed on Back: Filed in the office of the Court Clerk, Pontotoc County, Oklahoma, November 8th, 1915. A. D. Tanner, Court Clerk, by A. R. Sugg, Deputy.

418 STATE OF OKLAHOMA,
County of Pontotoc, ss:

Supreme Court.

No. 6392.

LOTTIE CARNEY, Plaintiff in Error,

vs.

J. C. CHAPMAN et al., Defendants in Error.

Certificate of Clerk to Corrected Case-made.

I, A. D. Tanner, Court Clerk of Pontotoc County, Oklahoma, and who has the care and custody of the records of the District Court

within and for said county and State hereby certifies that the foregoing corrections to the case-made in this cause and the stipulations and order of said Court, is a true and correct transcript of the record as now on file in my office.

Witness my hand and the seal of said Court, this 11th day of Nov. 1915.

[SEAL.]

A. D. TANNER,
Court Clerk, Pontotoc County, Oklahoma.

419 Thereafter, at the October, 1915, Term of said Supreme Court, on the 2nd day of November, 1915, the following proceeding was had in said cause, to wit:

#6392.

LOTTIE CARNEY

vs.

J. C. CHAPMAN et al.

And now on this day it is ordered by the court, that upon the motion filed herein on Oct. 18, 1915, plaintiff in error be allowed to withdraw the case made in the above cause, for the purpose of correction; amendment to be made within 35 days, under supervision of trial court, upon 5 days' notice to opposite party.

420 Thereafter, at the October, 1915, Term of said Supreme Court, on the 9th day of November, 1915, the following proceeding was had in said cause, to wit:

#6392.

LOTTIE CARNEY

vs.

J. C. CHAPMAN et al.

And now on this day it is ordered by the court that the above cause be stricken from the December assignment and continued for the term, as per stipulation filed herein.

421 Thereafter, at the January, 1916, Term of said Supreme Court, on the 8th day of March, 1916, the following proceeding was had in said cause, to wit:

#6392.

LOTTIE CARNEY

vs.

J. C. CHAPMAN et al.

And now on this day the above cause is argued orally and the cause is submitted, and it is ordered by the court that defendant

in error be permitted to insert additional authorities in brief, and plaintiff in error 20 days in which to file reply brief.

422 Thereafter, at the April, 1916, Term of said Supreme Court, on the 23rd day of May, 1916, the following proceeding was had in said cause, to wit:

#6392.

LOTTIE CARNEY

VS.

J. C. CHAPMAN et al.

And now this cause comes on for final decision and determination by the court upon the record and briefs filed herein.

And the court having considered the same finds that the judgment of the trial court in the above cause should be affirmed. Opinion by Wilson, C.

By the Court: It is so ordered, the opinion herein is hereby adopted in whole and judgment is entered accordingly.

423 In the Supreme Court of the State of Oklahoma, Supreme Court Commission, Division Number Five.

No. 6392.

LOTTIE CARNEY, Paintiff in Error,

VS.

J. C. CHAPMAN, DAVID ALBERSON, SINA ALBERSON, SALINA ALBERSON, TOM PENDLETON, and L. M. CHANDLER, Defendants in Error.

Filed May 23, 1916. William M. Franklin, Clerk.

Syllabus.

1. Where, in the trial of case, a party, in the formation of the jury, challenges a juror for cause and the challenge is erroneously overruled, but where it appears from the record that such juror was challenged peremptorily and did not serve on the trial jury and it does not appear from the record that the challenging party exhausted the number of peremptory challenges to which she was entitled or that she demanded and was refused the right to challenge any other objectionable juror or that an objectionable juror was permitted to serve in the trial of the case, the ruling of the court overruling the challenge does not constitute reversible error.
2. The Court, in its instructions, defined a common law marriage and put on the prevailing party the burden of establishing a common law marriage between the grantor and the mother

of one, John Alberson, from whom his grantor inherited the land in controversy. There was evidence in the case sufficient to establish an Indian custom marriage between said parties, as an Indian custom marriage was defined by other evidence in the case. The court's instruction, while denominating such marriage a "common law" marriage, put on the prevailing party the burden of establishing the existence of every fact essential to an Indian custom marriage, as that relation was defined by the evidence. The prevailing party's pleadings denominated such marriage a "common law" or tribal custom marriage."

Held: The misuse of the term "common law marriage" was harmless error.

Commissioner's Opinion.

Division No. 5.

Error from the District Court, Pontotoc County.

Hon. Tom D. McKeown, Judge.

Action by J. C. Chapman against David Alberson, Sina Alberson and Salina Alberson, Minors, and their Guardians, Willie Monroe and Tom Jones, and Tom Pendleton and Lottie Carney.

Judgment for the plaintiff and defendant, Lottie Carney, brings error.

Affirmed.

C. F. Green and J. W. Bolen, Ada, Okla., attorneys for Plaintiff in Error.

Robt. Wimbish, W. C. Duncan, Ada, Okla., attorneys for Defendant in error, J. C. Chapman.

424 Opinion by WILSON, C.:

This action was originally instituted by the defendant in error, J. C. Chapman, who will, for convenience, be hereinafter referred to as the plaintiff. The action was one in ejectment against the defendant, Tom Pendleton, who was a tenant in possession of the land in controversy, but as against the defendant, Lottie Carney, and the Albersons, the action was one to quiet title. The defendant, L. M. Chandler, was, after the commencement of the suit, let in to defend the warranty clause of his lease to Pendleton.

At the trial of the case the issues between the plaintiff and Pendleton and Chandler were, by stipulation, withdrawn from the consideration of the jury and submitted to the court, which rendered judgment sustaining Pendleton's right of possession under one of his leases for the term of such lease.

The issues between Lottie Carney and the Albersons, on one part, and the plaintiff, on the other were, however, submitted to the jury,

which returned a verdict for the plaintiff and against said defendants, which was, in form, a verdict for the possession of the land. Upon this verdict a judgment was rendered by the court for the plaintiff and against the defendants, Carney and the Albersons, quieting plaintiff's title to the land in controversy against the claims thereto of the said defendants. A motion for a new trial was in due time filed and overruled and from said judgment and decree of the court the defendant, Lottie Carney, appealed to this court, making the plaintiff and her codefendants in the lower court defendants in error.

Only three reasons are urged in the brief by the plaintiff in error why the judgment of the lower court should be reversed, they being:

First. Error of the court in overruling defendants' challenges to two jurors.

Second. Error of the court in its instruction to the jury, 425 and,

Third. Error of the court in refusing to give an offered instruction.

Defendant, Lottie Carney, interposed challenges for cause to two of the jurors which were overruled by the court and the order overruling the same excepted to at the time. Both of the challenged jurors were afterwards peremptorily challenged by defendant and were excused from the jury and did not take part in the trial of the case. There is nothing in the record from which it appears that any other juror objectionable to the defendant was permitted to remain on the trial panel by reason of defendant having had to exercise two of her peremptory challenges in excusing the two objectionable jurors in question, nor was it shown that she was denied the right to challenge any other juror and it isn't shown by the record that she even exercised her third peremptory challenge, she having been entitled to three such challenges.

Without discussing the evidence on the voir dire examination of the objectionable jurors to determine whether the court erred in overruling defendant's challenges for cause we are impelled to the conclusion that the record does not reveal reversible error on part of the court in respect of its action in that particular.

It is a rule sustained by a decided weight of authority that error on part of the court in overruling a challenge to an objectionable juror is not material if such juror did not serve as such on the trial of the case and the legal rights of the objecting party were not prejudiced thereby, and in view of the fact that the objectionable jurors in this case were peremptorily challenged and did not serve as jurors upon the trial of the case and in view of the further fact that the record does not show that the complaining defendant exhausted her peremptory challenges or that she demanded the right to challenge other objectionable jurors and that that right was denied her we can not consider that she was prejudiced by the action of the trial court in overruling her challenges for cause.

24 Cyc. 326.

City of Guthrie vs. Snyder, 43 Okla. 334; 143 Pac., 8.

State vs. Lumphrey, (Or.) 128 Pac. 824.

Rev. Laws, 1910, sec. 6005.

426 Defendant predicates error on the action of the trial court in giving the following instruction, to-wit:

"The court instructs the jury that a common law marriage exists when a man and woman, capable of entering into a marriage contract, enter into an agreement to at once become husband and wife, and in pursuance of such agreement live together and cohabit as husband and wife.

Such agreement to become husband and wife may be express or implied.

An express agreement is where the parties thereto expressly agree.

An implied agreement is where the conduct of the parties with reference to the marriage is such as to induce the belief that they intended to do that which their acts have indicated that they have done, and the issue born of such marriage is legitimate."

The giving of this instruction was error for the reason that it was error to instruct on what was a common law marriage.

The land involved in the suit was the allotment of one, John Alberson, deceased, a Chickasaw Indian. The plaintiff derived his title by warranty deed from one Charles Puller. Plaintiff claimed that Alberson was the son of said Puller and one, Louisa James, an Indian woman, who became husband and wife by a common law or tribal custom marriage in the year 1887; that Louisa subsequently died and that afterwards, in the month of June, 1911, John Alberson died, leaving his father, Charles Puller, plaintiff's grantor, his sole heir.

The defendant, Lottie Carney, now plaintiff in error, sister to Louisa James, claimed that Charles Puller and Louisa were never married; that John Alberson was the bastard son of Louisa and that she, as his mother's sister and his aunt, was his sole surviving heir.

If plaintiff's contention that John Alberson was a legitimate son of Charles Puller and Louisa James was correct, then his, Plaintiff's, title to the land involved in the controversy was good and he rightly prevailed in the action but if Lottie's contention that Charles and Louisa were never husband and wife and that John was an illegitimate son of Louisa was correct, then she, Lottie, was the sole surviving heir of John and inherited the title to the land in controversy and should have prevailed in the lower court. Thus it will be seen that the question whether Charles and Louisa had become husband and wife by a common law or tribal custom marriage in 1887 became the pivotal question in the trial court.

427 Plaintiff's petition alleged that Puller and Louisa James became husband and wife by a "common law" or "tribal custom" marriage but as it has been held (*Wilson v. Owens*, 86 Fed. 571) that what is known as a common law marriage was not in force in the Indian Territory prior to May 2nd, 1890, there could not have been a common law marriage between Puller and Louisa James in 1887 and the court's instruction defining a common law marriage was not warranted by the facts. However, there was undisputed evidence in the case that at the time Charles and Louisa were alleged to have been married what is commonly termed tribal custom marriages were practiced among the Chickasaw Indians and that when a man and woman of the tribe, qualified to enter the marriage state,

took up with each other and consorted together as husband and wife they were regarded by their tribe people as being married.

By the act of congress of May 2nd, 1890, it was expressly provided: "That all marriages heretofore contracted under the laws or tribal customs of any Indian nation located in the Indian Territory are hereby declared valid, and the issue of such marriage shall be deemed legitimate and entitled to all inheritances of property or other rights, the same as in the case of issue of other forms of lawful marriage."

26 Stat. at L., c. 182, p. 81, sec. 38.

Chancey vs. Whinnery, — Okla. —; 147 Pac., 1036.

Therefore, if Puller and Louisa were married in 1887 according to their tribal custom, John, as the off-spring of such marriage, was a legitimate child entitled to inherit and transmit title to land as such.

From an examination of the court's instructions in the case we are inclined to believe that the terms "common law marriage" and "marriage by custom" were used interchangeably and that the mere misuse of the term "common law marriage" was harmless. The instruction complained of contained every element necessary to constitute a tribal custom marriage as that kind of a marriage was defined by the undisputed evidence in the case and if it contained other elements and thereby placed a greater burden of proof on the plaintiff than was warranted by the evidence the defendant cannot be heard to complain of the error, for as to her it was harmless.

428 For the reasons just given why the court's erroneous instruction defining a common law marriage was harmless its refusal to give the defendant's two requested instructions, of which the defendant complains, was also harmless.

Another thing appeals to the writer hereof, which, though not urged in the briefs, we think renders harmless any error the court might have made either by giving or refusing instructions or overruling defendant's challenges to the two jurors, and that is this: The issues between plaintiff on one part and Pendleton and Chandler on the other involved the right of possession of specific real property and were issues proper to be submitted to a jury, unless a jury was waived, but the issues between the plaintiff and the defendant, Carney, were equitable and the intervention of a jury was not mandatory and any verdict which a jury to which such issues were submitted might have rendered would have been purely advisory and unless approved by the court should properly have been disregarded by it in arriving at its judgment. As between Pendleton and Chandler on one part and the plaintiff on the other it was stipulated that the questions involved might be submitted to the court and the issues as between those parties were specifically withdrawn from the jury. The Court, by its judgment, approved the verdict of the jury as between the plaintiff and the defendant, Carney, and decreed the title to the land involved in the action to be in the plaintiff. We have reviewed the evidence in the case and, while there was a marked conflict therein as to whether Puller and Louisa James were married according to a prevailing Indian custom or whether their relations

were illegitimate and lustful, there was sufficient evidence to reasonably sustain the judgment of the trial court and that judgment has our approval.

Believing that any errors the court may have made were harmless, we recommend that the judgment be affirmed.

May 23, 1915.

By the Court: Adopted in whole.

429 In the Supreme Court of the State of Oklahoma.

No. 6392.

LOTTIE CARNEY, Plaintiff in Error.

vs.

J. C. CHAPMAN, DAVID ALBERSON, SINA ALBERSON, SALINA ALBERSON, TOM PENDLETON, and L. M. CHANDLER, Defendants in Error.

Motion for Rehearing.

Filed June 7, 1916. William M. Franklin, Clerk.

Comes now the plaintiff in error, Lottie Carney, and respectfully moves that the court set aside its decision rendered on the above cause on May 23, 1916, and grant a rehearing on said cause, on the ground and for the reasons hereafter set out, which affect the substantial rights of plaintiff in error; and that upon said rehearing judgment be rendered in favor of plaintiff in error:

First.

A. The court in holding that instruction as to what constituted a common law marriage contained every element necessary to constitute a tribal custom marriage, and that the error of the trial court in refusing to instruct the jury that a marriage entered into by Chickasaw Indians, "without a compliance with their law is void,"

430 fell into error for the reason that the court's attention was not called to the decision of our court holding that the validity of an Indian marriage rests not only upon the customs, but on the laws of the tribes:

Chancey vs. Whinney, 147 P. 1036 and the Act of Congress of May 2, 1900 cited therein.

Cyr vs. Walker, 116 P. 930.

And the court over-looked the statute of the Chickasaw Nation, C. M. 335, referred to in brief of both plaintiff and defendant in error, which provides that all marriages shall be solemnized by a judge or an ordained minister, and that all persons living out of lawful wedlock shall be compelled by the county judge to be lawfully joined together; and the court's attention was not called to the

curative and interpretative statute of the Chickasaw Nation, C. M. 336, which provides that whereas the District Court of Pontotoc County has held that those marriages solemnized by ministers not ordained were legally void and the issue of such void marriages illegitimate, and that therefore on the ground of public policy, all such marriages should be legalized.

The court's attention was not called to the fact that each and every witness examined by defendant in error, plaintiff below, as to the customs of the people, testified that in olden times the people would simply take up together, but that, as said by John Foster C. M. 327, "after they formed the law" they would go before a preacher, who would give them a certificate; but that no proof was offered to show that Louisa James and Charley Pulier ever went before a preacher to be married.

431 B. The court's attention was not called to the decision of our courts holding that the laws of Indian Tribes is a foreign law and subject to the same rule of evidence as any other foreign law:

Porte vs. United States, 104 S. W. 855 (Indian Territory).

Davison vs. Gibson, 56 Fed. 443,

and that such laws cannot be proven orally except by a witness learned in said law, and that the best evidence is a copy of the law duly authenticated; and to the fact that the only proof offered by defendant in error, plaintiff below, was oral evidence by witnesses who did not qualify as experts witnesses.

C. The court's attention was not called to the principle of law, that in a suit in ejectment the plaintiff's right to recover rests on the strength of his own title; and that under this principle, the plaintiff below was bound to establish a lawful marriage between Louisa James and Charley Puller.

D. The court's attention was not called to the decision of our courts holding that the common law is "utterly at variance with the known habits and customs of the Indians," and can only be invoked upon the total failure of proof as to local laws and customs, and that "it is common knowledge of which the courts should take judicial knowledge that the domestic relations of the Indians have never been regulated by the common law of England, and that that law is not adopted to the habits, customs and manners of the Indians."

Gibson vs. Davis, 56 Fed. 443 (decided 1898).

432 And that prior to the enactment of statutes by the Tribes "marriage among the Indians must be regarded as taking place in a State of Nature * * * among the savage tribes of the continent marriage is merely a natural contract, and that neither law, custom nor religion has affixed to it any condition or limitations or forms other than what nature has itself prescribed." That such relation could be dissolved at will.

Buch vs. Bronson (Okla. 1912) 127 Pac. 436,

and that this custom of nature mating pro tempore is far different

from common law marriage; and further that this custom had been abolished by the Chickasaw Statute, *supra*.

Second.

The court in holding it is not shown by the record that Lottie Carney exercised her third challenge; *the court over-looked* Sec. XII of petition in error, reciting that three persons were challenged peremptorily and the stipulation C. M. 396 which recites that defendant below exhausted her challenges; and while said stipulation uses the phrase "two challenges allowed by law" the fact that records show that the case made was withdrawn from this court for the very purpose of correcting the record to show that the plaintiff had exhausted her challenges allowed by the statute, this fact taken with the section of the petition in error, *supra*, and the statutory provision for three challenges, we respectfully submit should convince the court that the word "two" was a clerical mistake and that the doctrine of harmless error should apply.

Third.

The court in holding that the defendant below should have requested additional challenges, overlooked Sec. 4998 of Revised Laws of 1910, providing that each party may peremptorily challenge three jurors and no more and this after the challenges for cause had been completed; and overlooked the principle of law that allows each party three peremptory challenges or a protection against jurors believed to be unfair, even though no legal cause for challenge can be set up; but that to deprive the defendant below of this right, was not harmless error, but the taking from her of a constitutional right.

Defendant in error, Page 46 of Reply Brief, says: "While our court has not passed directly upon the validity of a common law marriage among the Chickasaw Indians, the Supreme Court of the Indian Territory in the case of *Porter vs. United States*, 104 S. W. 855, said," Here is set out the rule governing common law marriages. In this case, however, both the cause of action and the marriage under consideration, took place after the enactment of the Act of Congress of May 2, 1900 extending the common law over the Indian Territory; I therefore suggest that in as much as this question is before the court for the first time, and because of the vast property interests affected by the decision, that the plaintiff in error be granted leave to present oral argument and time to present a brief, and that the cause be transferred to the — Court.

C. F. GREEN,

J. W. BOLEN,

KIRBY FITZPATRICK,

Attorneys for Plaintiff in Error, Lottie Carney.

34 Thereafter, at the April, 1916, Term of said Supreme Court,
on the 13th day of June, 1916, the following proceeding was
had in said cause, to wit:

#6392.

LOTTIE CARNEY

VS.

J. C. CHAPMAN.

And now on this day it is ordered by the court that the petition for
rehearing filed herein be transferred to the Supreme Court, and the
motion for oral argument is overruled.

35 In the Supreme Court of the State of Oklahoma.

No. 6392.

LOTTIE CARNEY, Plaintiff in Error,

VS.

J. C. CHAPMAN et al., Defendants in Error.

Motion to Strike.

Now comes J. C. Chapman, one of the defendants in error, and
moves the court to strike the motion for rehearing filed herein for the
following reasons, to-wit:

First. Because there was no reasonable notice given of the filing
of said petition for rehearing as required by Rule Five of this court.

Second. That not having seen said original motion that this de-
fendant in error is unable to say, but is informed and believes, that
the petition for rehearing was not filed with the clerk of this court
within fifteen days from the date on which the opinion in said cause
was filed as required by Rule Nine of this court.

Third. That there are no grounds stated in said motion for rehear-
ing that have not heretofore been stated in her brief.

Fourth. There is nothing either in the motion for rehearing or in
the opinion that indicates that the court rendering this opinion over-
ruled any statutes or decisions controlling in this case.

Fifth. That the original brief and reply brief of the plaintiff in
error covers all questions raised in said motion.

Sixth. That it is not distinctly and particularly set forth in said
motion that any question, statute or decision controlling in this case
has been by this court overlooked.

Wherefore defendant in error prays that said motion for rehearing
be stricken.

WIMBISH & DUNCAN,

Attorneys for the Defendant in Error J. C. Chapman.

[Endorsed:] No. 6392. Lottie Carney, Plaintiff in Error, vs. J. C. Chapman et al., Defendants in Error. Motion to Strike. Filed Jun- 15, 1916. William M. Franklin, Clerk.

436 I, May Brewster do solemnly swear that I served the above and foregoing motion to strike by delivering to J. W. Bolen, one of the attorneys for the plaintiff in error, in person, a true and correct copy of the same on the 14th day of June, A. D. 1916.

MAY BREWSTER.

Subscribed and sworn to before me this the 14th day of June, 1916.
[SEAL.] OREL BUSBY,

Notary Public.

My commission expires Aug. 13, 1918.

437 And thereafter, on June 19, 1916, the following proceeding was had in said cause, to wit:

#6392.

LOTTIE CARNEY

vs.

J. C. CHAPMAN et al.

And now on this June 19, 1916, it is ordered by the court that plaintiff in error be allowed 10 days in which to file brief in support of petition for rehearing.

438 Filed June 28, 1916. William M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

Case #6392.

LOTTIE CARNEY, Plaintiff-in-Error,

vs.

J. C. CHAPMAN et als., Defendants-in-Error.

Reply to Motion to Strike.

Comes now Lottie Carney, Plaintiff-in-Error, and for answer to the motion to strike of J. C. Chapman, one of the defendants-in-error, states:

As to the first grounds; that there is on file in this case the acceptance of service duly signed by all attorneys of record in this case.

As to second grounds; the opinion in this case was handed down May 23, 1916; petition for rehearing filed June 7, 1916, making

fifteen days excluding the first day and including the last, under the established rule of computation of time in the State of Oklahoma.

As to third, fourth and fifth grounds, plaintiff-in-error suggests that these questions are met in plaintiff-in-error's brief in support of the petition for rehearing, which permission of the court having been first had is filed of even date herewith, and plaintiff respectfully requests that the court read the brief before passing on the motion to strike.

Wherefore, Plaintiff-in-Error prays that the petition for re-hearing be granted in accordance with the original prayer in the petition.

By KIRBY FITZPATRICK,
C. F. GREEN,
J. W. BOLEN,
Attorneys for Plaintiff-in-Error.

[Endorsed:] Filed Jun- 28, 1916. William M. Franklin, Clerk.

440. Thereafter, at the July, 1916, Term of said Supreme Court, on the 18th day of July, 1916, the following proceeding was had in said cause, to wit:

* * * * *

#6392.

LOTTIE CARNEY

vs.

J. C. CHAPMAN et al.

* * * * *

And now on this day it is ordered by the court that the petitions for rehearing in each of the above entitled and numbered causes, be, and the same are each hereby denied.

441. Thereafter, on July 26, 1916, the following proceeding was had in said cause, to wit:

#6392.

LOTTIE CARNEY

vs.

J. C. CHAPMAN et al.

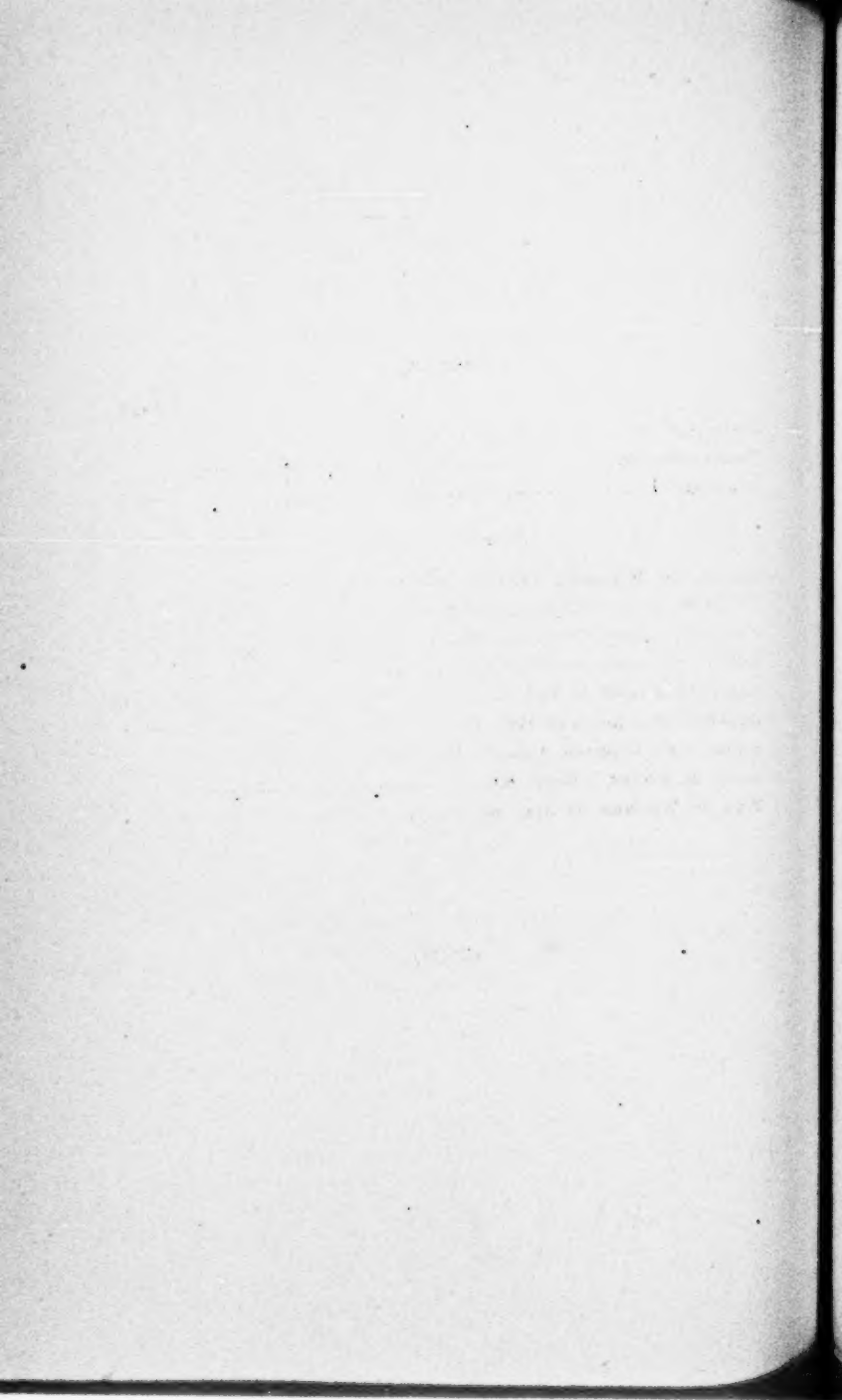
And now on this July 26, 1916, it is ordered by the court that the mandate of this court in the above cause be stayed for 30 days pending application for allowance of writ of error.

INDEX.

	Page.
Statement	1
Issues involved	3
Argument	6

AUTHORITIES CITED.

Chancey <i>vs.</i> Whinnery, 147 Pac., 1036.....	3
Porter <i>vs.</i> U. S. (Ind. Ter.), 105 S. W., 855.....	3
Porter <i>vs.</i> Wilson, 39 Okla., 507.....	3
Wilson <i>vs.</i> Owens, 86 Fed., 571.....	3
Payett <i>vs.</i> Powell, 51 Fed., 551.....	6
Davidson <i>vs.</i> Gibson, 56 Fed., 443.....	6
Johnston <i>vs.</i> Johnston, Adm., 30 Mo., 72, 77.....	7
Smith <i>vs.</i> Brown, 8 Kaus., 608.....	7
Wall <i>vs.</i> Williams, 11 Ala., 826.....	7



IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 281.

LOTTIE CARNEY, PLAINTIFF IN ERROR,

vs.

J. C. CHAPMAN, DAVID ALBERSON, SINA
ALBERSON, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF
OKLAHOMA.

BRIEF FOR PLAINTIFF IN ERROR.

Statement.

The land in question was allotted to John Alberson, a full-blood Chickasaw Indian and a ward of the Federal Government, who died intestate, unmarried, without issue, his mother, Louisa James, being predeceased. Upon the death of allottee, Lottie Carney, plaintiff in error, a maternal aunt

and nearest relation of the mother's blood, took possession of the land in question, has held the same at all intervening times, and now holds it under a supersedeas bond pending the judgment of this court.

Charles Puller, claiming to be the legal husband of ^{Louisa}~~Lottie~~ James and the father of allottee, while out of possession made a deed to J. C. Chapman, who brought suit to quiet title, prevailed in the trial court and in the State Supreme Court, and is here as defendant in error.

It is plaintiff's contention that allottee was illegitimate and the son of Louisa James, and that plaintiff is his sole surviving heir; defendant contends that allottee was the legitimate son of Charles Puller and Louisa James, and that his parents were legally married, and that Puller, through whom defendant holds, was the sole heir.

Thus, as said by the Supreme Court of Oklahoma:

"The question whether Charles and Louisa had become husband and wife * * * in 1887 became the pivotal question" (Tr., Rec., p. 218).

Plaintiff is a full-blood Chickasaw Indian and a ward of the Federal Government, and the State Supreme Court in divesting her of title placed what plaintiff contends was an erroneous construction upon the act of Congress of March 2, 1890 (26 Stat. L., 81; Tr., Rec., p. 219), thus raising a Federal question.

In construing said act of Congress the Oklahoma Supreme Court said:

"By the act of Congress of May 2, 1890, it was expressly provided: 'That all marriages heretofore contracted under the laws or tribal customs of any Indian nation located in the Indian Territory are hereby declared valid, and the issue of such marriage shall be deemed legitimate and entitled to all inheritances of property or other rights, the same as in the case of issue of other forms of lawful marriage'" (Tr. Rec., p. 219).

The proper construction of the said act by the said court previously rendered, and not as yet reversed, is found in *Chancey vs. Whinnery* (147 Pac., 1036), wherein it is said:

"The act does not attempt to make valid adulterous relations sustained toward each other by tribal members but simply declares that valid which according to the tribal laws and customs was valid."

Issues Involved.

So the issue in this cause is narrowed down to the single question as to whether Louisa James and Charles Puller were legally married in 1887, and as said by the trial court in its instructions to the jury (Tr. Rec., p. 194), the burden of proof was on Chapman, defendant in error and plaintiff below, to establish his question beyond reasonable doubt.

In *Porter vs. The United States* (Ind. Ter., 104 S. W., 855), it is said:

"We think the court upon a question of this kind, it being addressed to the court entirely to determine as a mixed question of law and fact, should be governed in its discussion under the rule of reasonable doubt, that is the fact of marriage—and therefore the competency of the evidence should appear beyond all reasonable doubt."

In *Porter vs. Wilson* (39 Okla., 507; 239 U. S., 170), the cause, as here, was a suit to quiet title. The court said:

"The burden of proof rests upon the plaintiff to prove not only the Indian customs but to establish his or her rights thereunder.

In *Wilson vs. Owens* (86 Fed., 571), it is said:

Courts do not take judicial knowledge of the laws of the various tribes of the Indian Territory, but

such laws are on the footing of local customs and must be pleaded and proven."

And again in *Porter vs. The United States, supra*, we find this rule:

"The testimony of the witness Davis was incompetent as it was not shown that he was learned in the law of the Chickasaw Nation as to marriage of Indians in that nation and his statement as to what laws were passed by the Chickasaws was incompetent as not the best evidence. The laws duly authenticated would be the best evidence. Assuming that the court could not take judicial knowledge of the Chickasaw laws they were subject to the same rule of proof as are all other foreign laws, by duly authenticated copies or books containing the laws purporting to be published by public authority, or by some one who testifies that he is learned in the laws of such foreign country."

We submit that defendant in error nowhere attempts to introduce duly authenticated copies of the law and in no single instance attempts to qualify as an expert any witness by which he sought to prove the Indian customs as to marriage.

The Supreme Court of Oklahoma, in its opinion, correctly states the issues as follows:

"Only three reasons are urged in the brief by the plaintiff in error why the judgment of the lower court should be reversed, they being:

"First. Error of the court in overruling defendant's challenges to two jurors.

"Second. Error of the court in its instruction to the jury.

"Third. Error of the court in refusing to give an offered instruction (Tr. Rec., p. 217)."

The error first referred to is not here for review. The instruction referred to as the second error is as follows:

"The court instructs the jury that a common law marriage was valid in the Indian Territory, even though the contracting parties did not follow the provisions of the Indian law, even though said Indian law fixed a punishment for the failure of the parties to follow such Indian Statute.

"D'f't Lottie Carney excepts. Exceptions allowed" (Tr. Rec., p. 194).

The instruction referred to as the third error, and refused by the trial court, which refusal the Supreme Court of Oklahoma, in its opinion (Tr. Rec., p. 220), refers to as a "harmless error," is as follows:

"The court instructs the jury that under the laws and customs of the Chickasaw Indians a common law marriage is not recognized and a marriage entered into by and between members of said tribe of Indians without a compliance with their laws is void" (Tr. Rec., p. 191).

Upon the error of the court in refusing this instruction, plaintiff in error has relied at every stage of this litigation, and now relies. In the trial of the case, in the motion for a new trial, in the assignment of error, in the brief, in the State court, in the petition for re-hearing, in the prayer for reversal, and here in this forum this old Indian woman, unable to speak the English language, has stood as the champion, not only of her own rights under the Indian statutes governing marriage, but has stood for the dignity of the laws of her people and the sanctity of the marriage contract.

ARGUMENT.

The common law was never in force in the Indian Territory. The Supreme Court of Oklahoma held that the instruction as to the common law marriage was a harmless error on the ground that the common law marriage and marriage by Indian customs were in all essential points similar, and in so holding, entirely ignored the statutes of the Chickasaw nation specifically governing marriage.

In *Payett vs. Powell* (51 Fed., 551), it is said:

"In the U. S. in the absence of statutes the presumption of the existence of the common law prevails in all territories of the original colonies, in all newly acquired territory originally settled by Englishmen or their descendants; but this presumption may not prevail in the Indian Territory because before its purchase by the United States it was part of the territory settled by the subjects and governed by the laws of other nations."

In *Davison vs. Gibson*, 56 Fed., 443, it is said:

"It being well settled that the English common law is not enforced in any State not settled by English colonists, * * * (citing authorities). It would undoubtedly be more rational to assume that the laws and customs of the Creek Nation on this subject were in harmony with the statute adopted by Congress, and that the laws of Congress were merely declaratory of the previously existing law, than to presume that the English common law, a system utterly at variance with the known habits and customs of the Indians. * * * It is common knowledge, of which the courts will take judicial knowledge, that the domestic relations of the Indians of this country

have never been regulated by the common law of the English and that that law is not adapted to the habits and customs of the Indians."

The time was when "Nature Mating," such as sought here to be established, which had neither the sanction of priests nor judiciary, obtained among the uncivilized Indians, but such customs have ceased to exist long prior to the marriage in question.

In *Johnston vs. Johnston*, Adm., 30 Mo., 72; 77 Am. Dec., 598, the court says:

"It is plain that among the savage tribes of this continent marriage is merely a natural contract and that neither law, customs nor religion has affixed to it any limitations of forms other than what nature of itself has prescribed."

In *Smith vs. Brown*, 8 Kan., 608, it is said:

"There is no priest or other person who performs any ceremony at the marriage * * * when a man and wife get tired of living together and wish to separate and leave each other, then all they have to do is to separate and abandon each other, and quit living together and go apart. * * * There is no Indian custom that prevents either or both from marrying again whom they please."

In *Wall vs. Williams*, 11 Ala., 826, the court says:

"Marriage among the Indian tribes must be regarded as taking place in a state of nature."

And we think it likely that the court had in mind such a condition in laying down this rule, which if allowed to stand will be a reproach to our Indian citizens, some of whom are not unknown in the councils of our nation.

But whatever the custom may have been in ancient or modern times it was never similar to the common-law custom, in support of which we refer the court to *Payett vs. Powell*, 51 Fed., 551.

Will it be contended that this "Nature Mating" is in all things similar to the common-law marriage, upon which rests the legitimacy of the ancestors of this republic, and which had obtained in its dignity and solemnity in parts of the nation in some of the States of the Union?

Furthermore, the court has entirely overlooked the written law, and such taking precedence of all customs and unwritten laws. Two years prior to the alleged marriage, to wit, in 1876, the Senate of the Chickasaw Nation enacted the following laws:

"SECTION 4. Be it further enacted, That all marriages in this nation shall be solemnized by any judge or ordained preacher of the gospel."

(See constitution and laws of the Chickasaw Nation, 1899, p. 77.)

If there can be any question as to the intent of the Chickasaw lawmakers it was solved in a curative statute of October 12, 1897, found on page 78 of said volume:

"And, whereas, many of our citizens have been united in bonds of matrimony by preachers not ordained or authorized to marry individuals by regulations of the church to which such preachers belonged."

"And, whereas, the District Court of the Chickasaw Nation in the county of Pontotoc, at the January term, did decide that all such marriages was unauthorized by the church to which such preachers belonged, and consequently both canonically and legally void" * * *.

"And, whereas, by the decision in question the parties living together are not husband and wife, nor the children of such marriage, legitimate, therefore"

* * * (id. 78).

Here follows an enactment legalizing such marriages and legitimatizing such children.

These laws were introduced in rebuttal by plaintiff in error, although she was not bound so to do (Rec., 185), and was called to the attention of ~~the~~ ^{the} Court in reply brief of plaintiff in error, page 87.

On page 112 of said "Chickasaw constitution and laws" is an act to compel the regulation of marriage of "All persons that were married * * * by mutual consent of parties who lived together as man and wife six months previous to the adoption of the constitution dated August 30, 1856."

Which act clearly shows the intent of the legislature to abolish marriage "by common consent."

Section 15 of the Chickasaw Bill of Rights is as follows:

"Neither polygamy nor concubinage shall be tolerated in this nation from and after the adoption of this constitution." (Con. and Laws of the Chickasaw Nation, 1899, p. 6).

And on page 224 of said volume is an act relating to divorces, and on page 104 is an act prohibiting polygamy which says:

"Polygamy shall consist of being married, by any judge of this nation, or other persons lawfully authorized to perform the ceremony to two or more men or women."

A general knowledge of the existence of these laws is established by the testimony of the following witnesses:

"Q. State how they would do?

"A. When wanted to marry go to the preacher and ask him to marry them, when he married, he would give them a certificate.

"Q. What did they do with that certificate?

"A. Some would record it and some would not (Tr. Rec., p. 180).

"Q. State how they would do.

"A. I cannot state the facts about how long it was, but to my remembrance, away back they did not marry, they took up with each other; after they formed this law then this marrying took place (Tr. Rec., p. 181).

"A. When they married at that time; that is, county judge or preacher marries him, they will give them a piece of paper and they will take that piece of paper and put it on record that such and such a man is man and wife (Tr. Rec., p. 183).

"Q. Ask him if they did not whip them for taking up together?

"A. No, sir, did not whip them, when came together that way took them before the court and either made them marry, and if did not marry they fined them and put them in jail, and if still continued they whipped them."

This suit was not brought by Charles Puller for the purpose of vindicating the memory of a dead Indian woman and a dead boy, which boy was overlooked and forgotten by him during life, left to take the name of another man and be allotted from the family card of Robert Alberson (Rec., p. 172), who gave him a name and home and assisted him in the allotment of his land, while Puller as shown by his family card (Rec., p. 187), did not claim this Indian as his son and made no provision for his allotment and conveyed his right to defendant, who in order to maintain the

same is willing to assail the marital status of an honorable race, long since advanced beyond their primeval custom of "Nature Mating", and who at the time of this alleged marriage had a Senate, a Supreme Court, public schools, orphan homes, and a code of written laws prohibiting adultery, governing marriage, and forbidding horse-racing, ball playing, and gambling on Sunday (See Chickasaw Constitution and Laws of 1899).

Respectfully submitted,

KIRBY FITZPATRICK,
Attorney for Plaintiff in Error.

(37279)

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 281.

LOTTIE CARNEY, *Plaintiff in Error*,

vs.

J. C. CHAPMAN *et al.*, *Defendants in Error*.

Affidavit of R. P. Ford.

Before me, L. E. Kidwell, notary public in and for the city of Washington, District of Columbia, personally appeared R. P. Ford of Ada, Oklahoma, and deposed as follows:

That affiant is a son-in-law and business manager of the plaintiff in error; that plaintiff in error is a full-blood Chickasaw Indian and cannot speak or understand the English language; that about a week ago, upon receipt of a telegram from Honorable Kirby Fitzpatrick (now a lieutenant in the aviation service of the United States, but formerly a practicing attorney of Oklahoma City), that the above-styled case was set down for hearing, that Lieutenant Fitzpatrick could not conveniently come to Washington and that the brief for plaintiff in error had not been filed, I endeavored to obtain from the attorneys for the defendants in error a stipulation for the continuance of the case, because of the absence of Lieutenant Fitzpatrick and because of the failure of the attorney in whose charge the case was left to prepare a brief for plaintiff in error. That the attorney for defendants in error refused to agree to a continuance; that

in view of the absence of Lieutenant Fitzpatrick plaintiff in error was anxious and willing that the case be continued, and only because of the refusal of the attorneys for defendants in error to agree to a continuance would Lieutenant Fitzpatrick agree to leave his urgent duties at his post and come to Washington to protect the interests of plaintiff in error. That plaintiff in error has no desire to take any advantage whatever of defendants in error by the lateness in the filing of a brief, and would even now willingly consent to a continuance of the case until such time as will give defendants in error an opportunity of fully replying to the brief filed.

Sworn to and subscribed before me this 23d day of April, 1918.

Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 281.

LOTTIE CARNEY, *Plaintiff in Error*,

vs.

J. C. CHAPMAN *et al.*, *Defendants in Error*.

Affidavit of Kirby Fitzpatrick.

Before me, L. E. Kidwell, notary public in and for the city of Washington, District of Columbia, personally appeared Kirby Fitzpatrick, Esquire, formerly of Oklahoma City, Oklahoma, and deposes as follows:

That at the outbreak of the present war affiant was a practicing attorney of Oklahoma City, Oklahoma, and as such represented plaintiff in error in the above-styled case; that after the decision of the lower court against plaintiff in error and upon appeal of the case to this honorable court affiant entered the service of the United States, and is a lieutenant in the aviation section thereof; that before he entered the service of his country he arranged with J. W. Field, a practicing attorney of Oklahoma City, Oklahoma, to prepare the brief for the plaintiff in error in this court. That about a week ago, upon receipt of a wire from the clerk of this court that the case was set down for hearing, affiant learned, much to his surprise and chagrin, that said Field had not prepared or filed the brief for plaintiff in error. That thereupon affiant came to Washington and immediately

undertook the preparation of a brief for plaintiff in error, which brief is now on file with the clerk of this court.

That upon entering the service of his country affiant gave up his entire law practice and has not been in position since that time to keep in touch with any of it. He assumed that said Field would prepare the brief as promised, and did not know until inquiry at the clerk's office that it had not been filed. That the brief now filed is in substance and effect the same as the brief used on behalf of plaintiff in error in the court below, and that there is no new or different matter therein, nor is there any new authority relied upon; that, therefore, as affiant very believes, the defendants in error will not in any way be surprised or prejudiced by the delay in the filing thereof.

Sworn to and subscribed before me, this 23d day of April, 1918.

Notary Public.

3
Office Supreme Court, U. S.

APR 23 1918

JAMES D. MAHER,
CLERK.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917.

No. 281.

LOTTIE CARNEY, PLAINTIFF IN ERROR,

vs.

J. C. CHAPMAN ET AL.

**IN ERROR TO THE SUPREME COURT OF THE STATE OF
OKLAHOMA.**

BRIEF FOR THE DEFENDANTS IN ERROR.

W. C. DUNCAN,
Attorney for Defendants in Error.

(25,530)

IN THE
SUPREME COURT OF THE UNITED STATES.

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J. C. CHAPMAN, DAVID ALBERSON, SINA
ALBERSON, ET AL., DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF
OKLAHOMA.

BRIEF FOR DEFENDANTS IN ERROR.

This suit originated in the District Court of Pontotoc County, Oklahoma, wherein the defendant in error, J. C. Chapman, was plaintiff, and the plaintiff in error was defendant. Trial was had to a jury, which returned a verdict in favor of the plaintiff, J. C. Chapman, and thereafter the case was appealed to the Supreme Court of the State of Oklahoma, and the judgment of the district court was affirmed.

Thereupon and on August 12, 1916, the Supreme Court of the State of Oklahoma authorized a writ of error to the Supreme Court of the United States, and the transcript was filed here October 3, 1916.

The controversy involves the allotment of John Alberson, who was a full-blood Chickasaw Indian, and died in Pontotoc County, in the year 1911. The plaintiff, J. C. Chapman, in said suit derived his title by warranty deed from one Charles Puller, a full-blood Chickasaw Indian, and claims that Charles Puller was the father of the deceased, John Alberson. The defendant, Lottie Carney, a full-blood Chickasaw Indian, claims to be a sister to Louisa James, who was the mother of John Alberson, and asserts that Charles Puller and Louisa James were never married, and that John Alberson was an illegitimate son of Louisa James, and that she, as his mother's sister and his aunt, was his sole surviving heir.

The action was one in ejectment against one Tom Pendleton, who was a tenant in possession of the land, and as against the defendant, Lottie Carney, and others, the action was one to quiet title. The judgment of the court was for the plaintiff, J. C. Chapman, for possession of the land, and quieting his title against the other defendants.

It was alleged by the plaintiff in the court below that Charles Puller and Louisa James were married according to the "Common law" or "tribal customs" of the Chickasaw Indians (Transcript, pp. 20-21). The defendant, in her answer, denied that Charles Puller and Louisa James were ever married by any authority of law, form, custom or otherwise, or was ever married at all, and further alleged that at the time of the birth of John Alberson, and for several years prior and subsequent thereto, that Charles Puller had a living wife; denied that Louisa James was ever married to any one, and alleging that said John Alberson was born out of lawful wedlock, and was never married or adopted by anyone (Transcript, pp. 46-47).

The issues thus raised was an issue of fact, the plaintiff on the one hand alleging the marriage, and the defendant

upon the other hand denying the same. No Federal question was raised or suggested in the pleadings, but the issues made up was the simple question of marriage or no marriage.

The court, after the testimony was introduced, charged the jury upon the issues presented by the pleadings and by the testimony, and the paragraphs of the charge on this question are as follows (Transcript, page 194):

"No. 2. The court instructs the jury, that a common-law marriage was valid in the Indian Territory, even though the contracting parties did not follow the provisions of the Indian law, even though said Indian law fixed a punishment for the failure of the parties to follow such Indian statute."

"No. 3. The court instructs the jury that a common-law marriage exists when a man and woman, capable of entering into a marriage contract, enter into an agreement to at once become husband and wife, and in pursuance of such agreement live together and cohabit as husband and wife, and hold each other out to the public as husband and wife.

"Such agreement to become husband and wife may be expressed or implied. An expressed agreement is where the parties thereto expressly agree. An implied agreement is where the conduct of the parties with reference to the marriage is such as to induce the belief that they intended to do that which their acts have indicated that they have done, and the issue of such marriage is legitimate."

"No. 4. The court instructs the jury, that if you believe from a fair preponderance of the evidence that Charles Puller and Louisa James agreed to live together as husband and wife, and that at the time they entered into said agreement, said Charles Puller's first wife, Louisa, was dead, and that said Charles Puller and Louisa James lived together and cohabited as husband and wife, and held themselves

out to the public as husband and wife, and that the said John Alberson was born as the result of said relation, then you are instructed that said John Alberson would be a legitimate child of the said Charles Puller, and your verdict should be for the plaintiff for possession of the land described in plaintiff's petition."

"No. 5. The court instructs the jury, that before persons can enter into a common-law marriage contract, or into a marriage contract according to custom, it must be shown by a fair preponderance of the evidence that neither person to said contract was under any disability at the time said contract was entered into, and the existence of a former wife still living would prohibit another marriage at common law or by custom, and before the plaintiff can recover in this case you must find that at the time of the alleged agreement to live together as husband and wife that Charles Puller had no other wife at the time they went together under such agreement, if any."

The defendant, Lottie Carney, requested the following instructions (Transcript, page 190):

"No. 1. The court instructs the jury that a common-law marriage exists when a man and a woman, capable of entering into a marriage contract, enter into an agreement to at once become husband and wife, and in pursuance of such agreement live together, and cohabit as husband and wife, and hold each other out to the public as husband * * *.

"Such agreement to become husband and wife may be expressed or implied.

"An express agreement is where the parties thereto expressly agree; an implied agreement is where the conduct of the parties with reference to the marriage is such as to induce the belief in your mind that they intended to do that which their acts have indicated

that they have done; that is, to take each other as man and wife.

"It is essential to a common-law marriage that there shall be a mutual agreement between the parties to assume toward each other the relation of husband and wife. Cohabitation without such an agreement does not constitute marriage and an agreement to live together is not marriage, if there is no agreement to live as husband and wife.

"J. C. Chapman, Plaintiff,

vs.

"David Alberson *et al.*

"Refused because covered in main charge. Defendant Carney excepts. Exception allowed.

"TOM D. McKEOWN,
"District Judge."

"No. 2. The court instructs the jury that under the laws and customs of the Chickasaw Indians a common-law marriage is not recognized and a marriage entered into by and between members of said tribe of Indians without a compliance with their laws is void.

"Refused. Defendant Carney excepts. Exception allowed.

"TOM D. McKEOWN,
"District Judge."

The opinion of the Supreme Court will be found on pages 216-220 of the transcript, to which reference is made.

The Supreme Court of the State of Oklahoma affirmed the verdict of the jury under the pleadings, the testimony and the charge of the court, and in affirming it had this to say (Transcript, page 218):

"If plaintiff's contention that John Alberson was a legitimate son of Charles Puller and Louisa James

was correct, then his, plaintiff's, title to the land involved in the controversy was good and he rightly prevailed in the action, but if Lottie's contention that Charles and Louisa were never husband and wife, and that John was an illegitimate son of Louisa was correct, then she, Lotta, was the sole surviving heir of John and inherited the title to the land in controversy and should have prevailed in the lower court. Thus it will be seen that the question whether Charles and Louisa had become husband and wife by a common law or tribal custom marriage in 1887 became the pivotal question in the trial court.

"Plaintiff's petition alleged that Puller and Louisa James became husband and wife by a "common-law" or "tribal-custom" marriage, out as it has been held (*Wilson vs. Owens*, 86 Fed., 571), that what is known as a common-law marriage was not in force in the Indian Territory prior to May 2d, 1890, there could not have been a common-law marriage between Puller and Louisa James in 1887, and the court's instruction defining a common-law marriage was not warranted by the facts. However, there was undisputed evidence in the case that at the time Charles and Louisa were alleged to have been married what is commonly termed tribal-custom marriages were practiced among the Chickasaw Indians, and that when a man and woman of the tribe, qualified to enter the marriage state, took up with each other and consorted together as husband and wife they were regarded by their tribe people as being married.

"By the Act of Congress of May 2d, 1890, it was expressly provided: 'That all marriages heretofore contracted under the laws or tribal customs of any Indian nation located in the Indian Territory are hereby declared valid, and the issue of such marriage

shall be deemed legitimate and entitled to all inheritances of property or other right, the same as in the case of issue of other forms of lawful marriage.'

"26 Stat. at L., c. 182, p. 81, sec. 38.

"*Chancey vs. Whinnery*, 147 Pac., 1036.

"Therefore, if Puller and Louisa were married in 1887 according to their tribal custom, John, as the off-spring of such marriage, was a legitimate child entitled to inherit and transmit title to land as such.

"From an examination of the court's instructions in the case we are inclined to believe that the terms 'common-law marriage' and 'marriage by custom' were used interchangeably and that the mere misuse of the term 'common-law marriage' was harmless. The instruction complained of contained every element necessary to constitute a tribal custom of marriage, as that kind of a marriage was defined by the undisputed evidence in the case, and if it contained other elements and thereby placed a greater burden of proof on the plaintiff than was warranted by the evidence the defendant cannot be heard to complain of the error, for as to her it was harmless.

"For the reasons just given why the court's erroneous instruction defining a common-law marriage was harmless, its refusal to give the defendant's two requested instructions, of which the defendant complains, was also harmless."

The first question we desire to present to this court is the question of jurisdiction. It seems to be the settled law that in order to give this court jurisdiction of a writ of error to the highest court of a State in which a decision could be had, it must appear affirmatively that a Federal question was presented for decision; that its decision was necessary to the determination of the cause, and that it was

actually decided, or that the judgment rendered could not have been given without deciding it.

First National Bank of Estherville *vs.* City Council of Estherville, 215 U. S., 339; 54 L. Ed., 223.

This case involved the assessment of bank stock, claiming that the assessment was in excess of the actual value of such stock, exorbitant and unjust, and asserting certain rule by which the true value should be ascertained, and upon that question Chief Justice Fuller says:

"These were not Federal questions. No mention of the National Banking Act was made, nor any right or privilege claimed under it, nor were the provisions of the Revised Statutes invoked by name or otherwise. There was no assertion of an issue in the case claiming the local statutes to be in conflict with or repugnant to the terms of section 5219 of the Revised Statutes or the Constitution of the United States. Plaintiffs filed a written pleading in the district court in which they set out all the proceedings leading up to the appeal and the grounds of their complaint against the action of the equalization board, and when the case went to trial filed an amendment alleging the additional grievance of inequality."

He then sets out the statute of the State of Iowa and the decision of the State court, and concludes as follows:

"If plaintiffs in error believed that the local statute was unconstitutional and invalid because of conflict with the Federal Constitution or Statute they could and should have said so; but the validity of the act was nowhere specifically drawn in question.

"Writ of error dismissed."

In the instant case the court will see that in no part of the proceedings from the petition to the verdict of the jury,

or in the motion for new trial, was there any Federal question concerning either the statutes or the Constitution of the United States called in question, nor was any claim made in any of the proceedings that any local statute was in conflict with, or repugnant to the terms of the United States statute or the Constitution of the United States.

This seems to be the settled law covering the jurisdiction which this court will exercise over State courts. The plaintiff in error does not bring herself within this rule. Nowhere in any of the proceedings is there drawn in question any statute or the Constitution of the United States, nor does she draw in question the validity of a statute of the State on the ground that it is repugnant to the Constitution or laws of the United States.

The error assigned, and on which the writ was granted, is as follows (Transcript, page 3) :

"The Supreme Court in the judgment here complained of said :

"Thus it will be seen that the question whether Charles and Louisa had become husband and wife, by common law or tribal custom marriage in 1887 became the pivotal question in the trial court.

* * * By the act of Congress of May 2, 1890, it was expressly provided: "That all marriages contracted under the laws or tribal customs of any Indian Nation now located in the Indian Territory are hereby declared valid, and the issue of such marriages shall be deemed legitimate and entitled to all inheritances of property or other rights, the same as in the case of the issue of other forms of lawful marriage." Therefore, if Puller and Louisa were married in 1887 according to their tribal customs, John as the offspring of such marriage was a legitimate child, entitled to inherit and transmit title to land as such.'

"Since the act of Congress, *supra*, held that marriage among the Indians in accordance with their

laws *and* customs was valid, the contrary would be true if such marriage was not in accordance with the laws *and* customs: The rights of Lottie Carney, a full-blood Chickasaw Indian, to the property in question, depends upon the legality of the marriage of Louisa James and Charley Puller in 1887, thus presenting a Federal question."

The only statute mentioned is the act of Congress of May 2, 1890, above set out. If Charles Puller and Louisa James were married in 1887, the above act of Congress does validate their marriage, if that validation was necessary. The Supreme Court of the State of Oklahoma, in discussing this act of Congress in the case of *Chancey vs. Whinnery*, 147 Pac., 1036, says:

"By this it was the purpose of Congress to give full force and effect to Indian marriages contracted according to the laws or customs of the Indian tribes in the Indian Territory, and to make legitimate the issue of such marriages so that such issue would have the right of inheritance of property or other rights. While the act had naught to do with the legitimacy in fact of the child of Billie and Sissy, it is expressive of the intention of Congress to give full recognition to the validity of Indian marriages, and the legitimacy of the issue thereof where the marriages were contracted according to the laws or tribal customs. The act does not attempt to make valid adulterous relations sustained toward each other by tribal members; it simply declares that valid which according to the tribal laws and customs was valid."

See also *Cricket vs. Hardin*, 159 Pac., 275.

But the reference to the statute, *supra*, by the Supreme Court of Oklahoma does not bring the case within the juris-

diction of this case, for the reason that the decision of this case was not against it, but on the contrary upheld and enforced it. The conclusion of the plaintiff in error in her petition and assignment of error so presented is not supported by the facts, that is to say, she concludes that "since the act of Congress, *supra*, held that marriage among Indians in accordance with their laws and customs was valid, the contrary would be true if such marriage was not in accordance with the laws and customs," and this she says raises a Federal question. In this she is in error, for the reason that the question of marriage according to the tribal custom was submitted by the court to the jury. The Supreme Court of Oklahoma in deciding the question says that it was error to call it a common law marriage, but that:

"From an examination of the court's instructions in the case, we are inclined to believe that the terms 'common-law marriage' and 'marriage by custom' were used interchangeably, and that the mere use of the term 'common law marriage' was harmless. The instruction complained of contains every element necessary to constitute a tribal custom marriage as that kind of a marriage was defined by the undisputed evidence in the case, and if it contained other elements and thereby placed a greater burden of proof on the plaintiff, than was warranted by the evidence, the defendant cannot be heard to complain of the error, for as to her it was harmless."

The assignment of error itself admits that marriage according to tribal laws and customs was valid, and that was in exact accord with the decision of the Supreme Court of the State of Oklahoma. The court in its decision says:

"There was undisputed evidence that at the time Charles and Louisa were alleged to have been married, what is commonly termed tribal custom marriages were practised, and that when a man and

woman took up with each other and consorted together as husband and wife, they were regarded by the tribe as being married,"

and then the court concludes by saying:

"We have reviewed the evidence in the case, and while there is a marked conflict therein as to whether Puller and Louisa James were married according to the prevailing Indian custom, or whether their marriages were illegitimate and lustful, there was sufficient evidence to reasonably sustain the judgment of the trial court, and that judgment has our approval."

It is very clear then that the court decided that Charles and Louisa were married according to the tribal customs among the Indians prevailing at that time.

In the case of *Ellis Keen vs. Sophronia Keen*, 201 U. S., 319; 50 L. Ed., U. S., 772, the Supreme Court of the United States held that a common-law marriage was a local and not a Federal question, the syllabus is as follows:

"What facts constitute a common-law marriage is purely local, and not a Federal question, and will not sustain a writ of error from the Supreme Court of the United States to a State court."

If our contention therefore is correct, that no Federal question has been raised that comes within the jurisdiction of this court, the writ of error should be dismissed.

We come now to the merits of this controversy as presented by the plaintiff in error. The error alleged consisted in the refusal of the court to give the following instruction requested by her, to-wit:

"The court instructs the jury that under the laws and customs of the Chickasaw Indians a common-law marriage is not recognized, and a marriage en-

tered into by and between members of said tribe of Indians without a compliance of their laws is void."

To which action of the court plaintiff in error duly excepted.

Also the trial court gave the following instruction, to-wit:

"The court instructs the jury that a common-law marriage was valid in the Indian Territory even though the contracting parties did not follow the provisions of the Indian law, even though said Indian law fixed the punishment for the failure of the parties to follow such Indian statute."

The supreme court in its final judgment held that the action of the trial court as to the instruction as aforesaid was error, but that the error was harmless, and of this finding of the court plaintiff in error complains and assigns the same as error. At the time of the alleged marriage in question the Chickasaw Nation had a statute providing:

"All marriages in this nation shall be solemnized by any judge or ordained preacher."

The Chickasaws also had a statute reciting:

"That the Indian district court had held that certain marriages performed by preachers not duly ordained were illegal and void, and enacting curative legislation concerning such marriages."

The testimony on behalf of the defendants in error as set forth in their brief on pages 27, 28, 29, 30, and 31, without exception establishes the fact that at the time the marriage in question is alleged to have taken place, the Indians uniformly went before a preacher to be married in accordance with the recently enacted laws. The defendants in error made no attempt whatever to prove that the parties to this al-

leged marriage ever went before a preacher, and this fact was called to the attention of the Supreme Court in the brief of the plaintiff in error on rehearing.

We desire to challenge the statement of facts set out in the petition and assignment of error concerning the charge of the court complained of in this: That only one paragraph of the court's charge is given, while there are five paragraphs on that particular question, and all five paragraphs should have been presented and all considered together. In other words, it is hardly fair, in fact it is misleading, to present only that part of the charge which may be erroneous standing alone, and leave out all that part which explains or modifies and corrects such apparent error. We therefore, ask the court to consider the entire charge as given above and as shown on pages 192-196 of the transcript.

"The questions of fact raised in the assignment of error, I take it, have been foreclosed and settled by the verdict of the jury, which was approved both by the trial court and the Supreme Court, and that is that tribal custom marriages were practiced among these Indians and Charles and Louisa were married in accordance with this custom" (Tr., pp. 218-19).

Much that has been said upon the question of jurisdiction applies with equal force to the merits of the case, and a large part of it will not be repeated, but the court is requested to consider the same in so far as it pertains to the merits of the controversy.

The refusal of the court to give the requested instruction was proper, for the reason that it entirely disregarded a marriage entered into in accordance with the tribal customs. There were two forms of marriage, one according to their laws, the other according to their customs, both recognized by the act of Congress, *supra*.

In the case of *Cyr vs. Walker*, 116 Pac., 931, it is said:

"The courts of the American Union have, from an early time, recognized the validity of marriages contracted between the members of any Indian tribe in accordance with the laws and customs of such tribe, where the tribal relations and government existed at the time of the marriage, and there was no Federal statute rendering the tribal customs or laws invalid. (*Morgan vs. McGhee*, 5 Humph., 13; *Earl vs. Godley* (*Earl vs. Wilson*), 42 Minn., 361; 7 L. R. A., 125; 18 Am. St. Rep., 517; 44 N. W., 254)."

In the case of *Chancey vs. Whinnery*, 147 Pac., 1036, the Supreme Court of Oklahoma by Justice Sharp says:

"The validity of Indian marriages contracted by the members of any tribe in accordance with the laws and customs of such tribe, where the tribal relations and government existed at the time of the marriage is one generally, if not universally, recognized, and is the settled law of this jurisdiction."

This court judicially knows that the tribal government of the Chickasaw Indians existed in 1887.

The court therefore did not err in refusing to give the requested instruction, for the reason that it disregarded marriages by tribal customs.

In deciding the instant case the supreme court of the State of Oklahoma held that the charge upon common law marriage was error, but that it was harmless. In the first place the plaintiff in error requested an instruction almost identical with the instruction given, and the court refused to give it for the reason that it was covered in the main charge (*Tran.*, p. 190), and the plaintiff in error having requested the instruction, it seems to us would be bound by the charge given.

The fact is that this case was tried in the lower court upon the theory that both the common law marriage, and the cus-

tom marriage were legal, and the terms as stated by the supreme court of the State of Oklahoma were used interchangeably. The fact that the plaintiff in error requested such a charge is evidence that at that time she regarded the common law marriage as legal.

An appellant, or plaintiff in error, will not be heard to allege error in instructions which were given at his request by the trial court. When a party submits to the court contradictory or inconsistent instructions, he ought not to be permitted to put the court in the wrong for giving one or the other, and if he presents two special charges on the same issue, he cannot complain if the court fails to select and give and charge the one more favorable to him. It would also appear that a party cannot assign as error the giving of an instruction which was produced by the giving in substance of an instruction which he requested. If the instruction given by the court was invited by the plaintiff in error, then she ought not to be heard to complain that the court erred in giving it. 4 Corpus Juris., 707.

In the case of *Cricket vs. Hardin*, 159 Pac. 275, which is a very recent case, the decision in the instant case is fully sustained. The facts in this case were that Josiah Cricket and one Chigona, known as Rachel, assumed a co-habital relation, which relation was indefinite as to the length of time, ranging probably from one to two years, during which time a child was born to them, and this marriage was brought into controversy and was held invalid by the trial court, and the supreme court in reversing the same has the following to say:

"To our minds it is clearly and conclusively established by the evidence that Josiah Crickett and Chigona, full-blood Cherokee Indians, assumed and maintained the marital relation according to the tribal custom universally prevailing among members of their class in that nation at the time; their status as man and wife was recognized by their neighbors

and acquaintances, and during the period they so lived together their child, Mary, the allottee, was born.

"In this and other jurisdictions where common-law marriages are recognized as valid, the doctrine announced in 1 Bishop on Marriage, Divorce and Separation, section 956, prevails, viz:

" 'It being for the highest good of the parties, for the children, and of the community that all intercourse between sexes in form matrimonial should be such in fact, the law when administered by enlightened judges, seizes upon all probabilities and presses into its service all things else which can help it, in each particular case, to sustain the marriage, and repel the conclusion of unlawful commerce.'

"While the common law had not been put in force or extended in its operation by congressional enactment so as to effect the domestic relations of members of the Five Civilized Tribes at the time Josiah Crickett and Chigona lived together, and 'it is common knowledge of which the court should take judicial notice that the domestic relations of the Indians of this country have never been regulated by the common law of England, and that that law is not adapted to the habits, customs, and manners of Indians (*Davison vs. Gibson*, 56 Fed., 443; 5 C. C. A., 543), it would indeed, be passing strange should courts in this enlightened age, in considering the validity of marriage contracts made conformably to Indian tribal custom, although not in strict compliance with the written tribal law, refuse to indulge that presumption, generally accepted as one of the strongest known to the law, favoring the innocence, good faith, and matrimonial intention of the parties, and thus de-

stroy Indian marriages and stigmatize their issue as illegitimate, while recognizing and applying such presumption to sustain common-law marriages of whites, founded on similar relations. Recognizing, regardless of race, that the good of the parties, their children, and society is the question of paramount importance in all such cases, this court has applied alike the salutary doctrine announced in *Bishop on Marriage, Divorce and Separation*, *supra*, to all forms of marriage in fact contracted.

"In the well-considered case of *Chancey vs. Whinery* (not yet officially reported), 147 Pac., 1036, wherein the validity of an Indian custom marriage was involved, it was said by Mr. Justice Sharp, speaking for the court:

"The authorities, with very general accord are to the effect that, when a marriage in fact has been shown, the law raises a presumption that it is valid casting the burden on him who questions it to establish its invalidity. This is one of the strongest presumptions known to the law. Measured by the rule laid down, plaintiff failed in his proof. Every intendment of law is in favor of matrimony. The law is so positive in requiring a party who asserts the illegality of a marriage to take the burden of proving it that such requirement is enforced even though it involve the proving a negative. When a marriage has been shown in evidence, whether regular or irregular, and whatever the form of the proofs, the law raises a presumption of its legality, not only casting the burden of proof on the party objecting, but requiring him throughout and in every particular plainly to make the fact appear, against the constant pressure of this presumption, that it is illegal and void.'

"The judgment should be reversed, and the cause remanded, with directions to the trial court to render judgment in conformity to the views herein expressed."

It is true that the Supreme Court of the State of Oklahoma held that the instruction complained of was error, for the reason that it was error to instruct on what was a common law marriage since it had been held in *Wilson vs. Owen*, 86 Fed, 571, that what is known as a common law marriage was not in force in the Indian Territory until May 2, 1890, but it further held that the error was harmless for the reason, (1) that from an examination of the court's charge, which means the entire charge, condensed as a whole, it believed that the terms "common law marriage" and "marriage by customs" were used interchangeably, and the mere misuse of "common law marriage" was harmless, and (2) for the further reason that the instruction complained of contained every element necessary to constitute a tribal custom marriage as that kind of a marriage was defined by the undisputed evidence in the case, and if it contained the elements and thereby placed a greater burden of proof on the plaintiff than was warranted by the evidence, defendant cannot be heard to complain of the error for as to her it was harmless.

Section 4791, Revised Statutes of the State of Oklahoma reads as follows:

"The court in every stage of action, must disregard any error or defect in the pleadings or proceedings which does not effect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such error or defect."

An error in an instruction is not sufficient to cause a reversal where it does not affect materially the substantial rights of the plaintiff.

Pearson vs. Yoder, 134 Pac. 421.

An inaccurate instruction which could not have misled the jury is not ground for reversal. *Redus vs. Mathison*, 121 Pac. 253.

Summarizing the case we desire to say in conclusion that we have tried to show from the record in this case:

1. That but two questions were raised in the lower courts by the pleadings and evidence, both questions of fact. (1) Whether marriage by tribal custom prevailed among the Chickasaw Indians in 1887, when Charles and Louisa were married, and (2) whether they were married in accordance therewith. Both these questions were answered in favor of the Defendant in Error.

2. That no Federal question was raised and presented either to the trial or supreme court of Oklahoma, and for this reason the writ should be dismissed.

3. That the marriage by tribal custom of Charles and Louisa was a valid marriage, confirmed and recognized by the act of Congress May 2, 1890.

4. That while the trial court improperly denominated a marriage by tribal custom a common law marriage, yet it clearly defined the marriage referred to and included therein every element necessary to a marriage by tribal custom, and that as to the plaintiff in error it was harmless, and also was brought about giving the charge substantially as requested by the plaintiff in error of which she ought not now be heard to complain.

We therefore ask (1) that the writ of error be dismissed, or (2) that the case be affirmed as decided by the supreme court of Oklahoma.

W. C. DUNCAN,
Attorney for Defendant in Error.